

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO
3 UNITED STATES OF AMERICA,
4 Plaintiff,
5 vs. NO: CR-15-4268 JB
6 ANGEL DELEON, et al.,
7 Defendants.
8

9 Transcript of excerpt of testimony of
10 TIMOTHY MARTINEZ
11 February 13, 2018
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1 THE COURT: All right. Mr. Martinez, if
2 you'll come in and stand next to the witness box
3 right here in front of you. And before you're
4 seated, if you'll raise your right hand to the best
5 of your ability, my courtroom deputy, Ms.
6 Standridge, will swear you in.

7 TIMOTHY MARTINEZ,
8 after having been first duly sworn under oath,
9 was questioned, and testified as follows:

10 THE CLERK: Please be seated. State and
11 spell your name for the record.

12 THE WITNESS: Timothy Martinez.
13 T-I-M-O-T-H-Y, M-A-R-T-I-N-E-Z.

14 THE COURT: Mr. Martinez. Ms. Armijo.

15 MS. ARMIJO: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MS. ARMIJO:

18 Q. Mr. Martinez, are you or have you been a
19 member of the Sindicato de Nuevo Mexico?

20 A. Yes, ma'am.

21 Q. When did you become a member?

22 A. In 2009, March of 2009.

23 Q. And were you incarcerated at that time?

24 A. Yes, ma'am.

25 Q. Where were you incarcerated?

1 A. I was at PNM, Level 5, in Santa Fe, New
2 Mexico.

3 Q. Okay. And the jury has heard that there
4 are two facilities there?

5 A. There's three.

6 Q. Correct. I think that they've mainly
7 heard about two facilities there, being the North
8 and the South. Were you in either one of those
9 facilities?

10 A. Yes, ma'am, the Level 5, the South.

11 Q. And who brought you in to the SNM?

12 A. Arturo Garcia, Michael Zamora, and Billy
13 Cordova.

14 Q. What is the SNM?

15 A. The SNM is a violent criminal
16 organization. It's known for its fear and it's --
17 anything violent, the SNM is into it. It's pretty
18 much a gang that's running the New Mexico prison
19 system. And not just the prison system; it's also
20 on the streets of New Mexico. And like I say,
21 they're involved in everything from extorting to
22 murders, kidnapping. It's an ongoing organization
23 that's just getting more and more reputation through
24 the violence and the acts that they commit, they get
25 more fear and respect, so it's a dangerous group of

1 individuals.

2 Q. Now, do they have an agenda that you know
3 of?

4 A. Well, like I say, they take pride in
5 knowing that they're the topmost violent gang in the
6 prison system. You know what I mean? They always
7 want that respect. They -- the objective is to be
8 the best in the criminal world, pretty much, of New
9 Mexico.

10 Q. Now, is there any sort of structure that
11 you're aware of?

12 A. Yeah, it's like a military structure. You
13 have your top, you have your captains, your
14 lieutenants, your sergeants. It's military-based.
15 There is chain of command. It's from the captains
16 all the way down to your regular soldiers down to
17 the very bottom man.

18 Q. In your time with the SNM, what was your
19 position, mainly?

20 A. I was a soldier.

21 Q. And so you mentioned that SNM is involved
22 in drugs; is that correct?

23 A. Yes, ma'am.

24 Q. Were you involved with drugs with the SNM?

25 A. Yes, ma'am. That was my primary thing in

1 the SNM. I was known for narcotics.

2 MS. ARMIJO: Now, I'm going to be moving
3 for the admission of 236, with no objection, Your
4 Honor.

5 THE COURT: No objection to 236?
6 Government's Exhibit 236 will be admitted into
7 evidence.

8 (Government Exhibit 236 admitted.)

9 BY MS. ARMIJO:

10 Q. Would you please display the first page on
11 this?

12 Mr. Martinez are you familiar with this
13 object? And you may not be. I'm not sure if you
14 are.

15 A. I'm really not, ma'am.

16 Q. Okay, we are going to go -- do you see
17 that it has your name there?

18 A. Yes, ma'am.

19 Q. And it looks like it's from the
20 Corrections Department?

21 A. Yes.

22 Q. Right. I'm going to first go to the
23 fourth page of that item. Are you familiar with
24 this item?

25 A. Yes, ma'am.

1 Q. And I want to talk a little bit about your
2 criminal history here. Were you convicted of, in
3 this case specifically -- how old were you -- let me
4 first back up. How old were you when you first
5 entered the Department of Corrections?

6 A. I was 21 years old.

7 Q. And is this the case, if you can look at
8 it, that eventually sent you to the Department of
9 Corrections?

10 A. In fact, it's not.

11 Q. Okay. Which was the first one that sent
12 you to the Department of Corrections?

13 A. It was a case out of Bernalillo County,
14 out of Albuquerque, New Mexico, in 2004. It was an
15 armed robbery charge. The paper that we're looking
16 at right now is a charge that I picked up prior to
17 that, which was possession with intent to distribute
18 narcotics. And they gave me probation for that.
19 This is my very first charge, the paper we're
20 looking at. This is verification of that charge.

21 Q. So you first have a
22 possession-of-narcotics charge; is that correct?

23 A. Yes, ma'am.

24 Q. And you were placed on probation?

25 A. Yes.

1 Q. That was revoked when you committed an
2 armed robbery?

3 A. Yes, ma'am.

4 Q. And I believe we can go to the next Bates
5 stamp 8797, which should be two pages further down.
6 All right. And if we could go to the -- do you
7 recognize that court number?

8 A. Yes, ma'am. That's my armed robbery
9 charge.

10 Q. Okay. And if we could go to the next page
11 of that. Is that your armed robbery conviction
12 there?

13 A. Yes, ma'am.

14 Q. Did you receive nine years?

15 A. I received nine years with seven years
16 suspended, which left me a total of two years'
17 incarceration.

18 Q. And do you also have -- if we could go to
19 Bates 8807 of that document, do you also have one
20 more case in which you received felony convictions
21 as well? And I'm sorry, it's page 11 of that
22 document. Are you familiar with this page?

23 A. Yes, ma'am.

24 Q. And are those the convictions that you
25 have in relationship to this case?

1 A. Yes, ma'am.

2 Q. All right. And how many years did you
3 receive for this case?

4 A. This case, I was given 32-and-a-half years
5 with 20 years suspended, which left me a total of 12
6 and a half of incarceration.

7 Q. All right. Now, out of all of these
8 cases -- you've mentioned that you are an SNM Gang
9 member. Were any of these incidents that we've
10 talked about so far committed for the SNM, or was
11 this prior to you becoming an SNM member?

12 A. These were all prior to becoming a member.

13 Q. Now, were you a member of a street gang?

14 A. No, ma'am.

15 Q. Did you actually graduate from high
16 school?

17 A. Yes, ma'am, I did.

18 Q. What were you considered in high school?

19 A. In high school I was a jock and a cowboy
20 I've always excelled in sports. In high school, I
21 was in the Honor Society. You know what I mean?
22 I've always been a jock. I was a team captain of the
23 varsity wrestling team, two times state champ. You
24 know what I mean? So I was never really a gangster.
25 I was always a jock and a cowboy.

1 Q. And did you grow up in Silver City?

2 A. Yes, ma'am.

3 Q. Now, did you join the Marines?

4 A. Yes, ma'am, I did. I joined right after I
5 graduated high school.

6 Q. And when you -- did you leave the Marines
7 after a time period?

8 A. Yes, ma'am.

9 Q. Can you tell us about that?

10 A. I caught an R2 15 Section B discharge,
11 other than honorable discharge. I ended up getting
12 in a confrontation, a physical confrontation, with
13 my superior officer, which led me to get court
14 martialled, and I got an other than honorable
15 discharge for it.

16 Q. And how old were you at that time?

17 A. 19? Going -- yeah, 19.

18 Q. And after that, is it then that you
19 started getting involved in criminal activity?

20 A. Yes, ma'am. I hit a very low point, and
21 because it was always my dream to be a military,
22 Marine, and I just hit a bad spot, so I downward
23 spiraled from there, got involved in drugs and
24 stuff.

25 Q. Now, you mentioned that you were brought

1 into the gang in 2009; is that correct?

2 A. Yes, ma'am.

3 Q. At the South. And what did you -- you
4 were South Level 4. Were there other gang members
5 there?

6 A. Level 5.

7 Q. I'm sorry, Level 5 at the South. Were
8 there other gang members there, other than the ones
9 that you mentioned that brought you in?

10 A. Yes, ma'am, there was more SNM members.
11 There was multiple gangs. The North and South
12 facility there, the maximum security prisons they
13 usually house a lot of the gangs at, so there's
14 Surenos, Burquenos. There's all sorts of gangs.
15 But the unit I lived in was primarily SNM.

16 Q. That's my next question: Were you living
17 with SNM Gang members?

18 A. Yes.

19 Q. Can you tell us a little bit about what
20 you were doing? You already mentioned that you were
21 a soldier involved in narcotics activity. What
22 specifically were you doing when you first became an
23 SNM Gang member?

24 A. I was running narcotics through the
25 facilities. I was known to hit heroin. I was

1 hitting heroin, meth, cocaine, and within the
2 prison, so I had a reputation of being an
3 established drug dealer within the system.

4 Q. Okay. What do you mean, "hitting"?

5 A. By "hitting," I mean by smuggling in
6 through visits or using fellow officers to bring me
7 drugs.

8 Q. Were you yourself a drug user?

9 A. No, ma'am.

10 Q. Did you ever use on occasion?

11 A. Very rarely. I did use.

12 Q. Now, you mentioned heroin, and what were
13 the other drugs?

14 A. Heroin, cocaine, methamphetamines, and
15 later on Suboxone. But prior to that, Suboxone
16 wasn't even around back then, so...

17 Q. And who would you -- when you would get
18 the drugs, what would you do with them? I mean,
19 would you sell them? Would you use them? I mean,
20 what would you do with them?

21 A. I sold them. I ran, I guess you'd say, a
22 very well business, and the narcotics -- I'd sold
23 them, I'd send money home to my family, I'd take
24 care of my wife at the time. I was paying the
25 house, car payments, everything. I sold them

1 in-house for canteen and everything that I needed.
2 For profit. That was my main thing. I'd rather
3 have money than use. That's another big reason I
4 don't use. I like to live good. So I pretty
5 much -- and I want to take care of my family.

6 Q. Okay. Now, you mentioned "canteen." What
7 did you mean by "canteen"?

8 A. Canteen is items that we purchase off of a
9 canteen list. It's like a store. They sell soups,
10 soda pops, candy bars, Little Debbies. It's pretty
11 much the way we stay fed within the system other
12 than the state trays that they give us.

13 Q. And you mentioned you were successful?

14 A. Yes, ma'am.

15 Q. I'm going to fast-forward a little bit
16 just briefly to December 3 of 2015. Do you recall
17 that date?

18 A. Yes, ma'am.

19 Q. And what happened on that date?

20 A. About 5:00 in the morning the STIU was
21 knocking at my door saying "Emergency transport." I
22 had no idea where I was going. I was in Southern
23 New Mexico, right near Cruces, at the prison here.
24 They're knocking at my door about 5:00 in the
25 morning, like I say. They handcuffed me, shackled

1 me up, put me in a little van, ended up in
2 Albuquerque at the Federal Courthouse, and got
3 interviewed, processed, I guess you could say, by
4 the marshals. They processed us.

5 Then the following day is when we got our
6 arraignment from these charges right here on this
7 RICO case.

8 Q. Is it fair to say that on December 3 you
9 were arrested in the federal case that you're here
10 in court on?

11 A. Yes, ma'am.

12 Q. Okay. At the time that you were arrested,
13 did you have money in your Correction account?

14 A. Yes, ma'am, I did.

15 Q. Okay. Approximately how much money did
16 you have?

17 A. A little over \$25,000.

18 Q. And how did you get that money?

19 A. From selling drugs.

20 Q. And where did you sell drugs from?

21 A. Both inside the walls, to other convicts;
22 and on the streets. I was running drugs on the
23 streets.

24 Q. Would you supply them to SNM Gang members?

25 A. Yes, ma'am.

1 Q. Now, you mentioned that you were in South,
2 Level 5. Did you stay there, or did you eventually
3 get moved?

4 A. What time period?

5 Q. Well, where did you go from there, I
6 should say?

7 A. In 2009?

8 Q. Yes.

9 A. I was there in 2009. I'd only -- they
10 made me a brother of the SNM in the beginning of
11 March. By the end of March I was transferred to the
12 Northeast New Mexico Detention Facility, which is in
13 Clayton, New Mexico.

14 Q. Then where did you go after Clayton?

15 A. From Clayton I went back to the South, in
16 Santa Fe, and that's where I did a year waiting for
17 housing in Southern New Mexico, here in Cruces, the
18 SNM unit.

19 Q. All right. And eventually did you make
20 your way down to Southern?

21 A. Yes, ma'am.

22 Q. When did you go to Southern?

23 A. 2011, June, July-ish, I want to say, of
24 '11.

25 Q. All right.

1 A. I could be wrong, but I want to say June
2 or July of 2011.

3 Q. Is when you came down to Southern New
4 Mexico?

5 A. Yes, ma'am.

6 Q. Now I'm going to ask you about a few
7 people. Do you know Anthony Baca?

8 A. Yes, ma'am.

9 Q. Do you see him in the courtroom?

10 A. Yes, ma'am.

11 Q. All right. And where is he seated?

12 A. Behind Mr. Villa.

13 Q. What is he wearing?

14 A. Looks like a suit.

15 Q. What color is the suit?

16 A. Grayish, darkish, with a tie. Bald head.

17 MS. ARMIJO: May the record reflect
18 identification of Mr. Baca?

19 THE COURT: The record will so reflect.

20 BY MS. ARMIJO:

21 Q. When did you meet Anthony Baca?

22 A. At Southern New Mexico in Cruces. It was
23 probably 2013 when I first was introduced to him.
24 I'd always heard of him, but I finally got
25 introduced to him in about 2013.

1 Q. And you say you had heard of him before?

2 A. Yes, ma'am.

3 Q. And when you met him, did you know what
4 his position, if any, was in SNM?

5 A. Yes, ma'am, I knew him to be the big dog
6 of the SNM, the leader of it. He's pretty much --
7 in military terms, he would have been the general,
8 and on down. He's the main one in the SNM. He had
9 the keys for all of the SNM.

10 Q. You mentioned he was the big dog. Do you
11 know what his nickname was?

12 A. Pup.

13 Q. All right. Now, going to when you met
14 him, did you have an opportunity to get to know him?

15 A. A little. We had encounters here and
16 there. When he first got there, we were on tier
17 time, which means the prison, the pod we're living
18 in, had two tiers: Top tier, bottom tier. So when
19 the bottom tier is out, the top tier is locked down,
20 and so forth. I lived on top, he lived on the
21 bottom tier. So every now and then I'd make it to
22 his door, and we'd have conversations and stuff. I
23 looked up to him. He was my big homie. He was the
24 one driving the car.

25 Q. What do you mean "driving the car"? What

1 are you referring to?

2 A. He was leader of the SNM. He was highest
3 that it gets at that point in time. There is no one
4 above him.

5 Q. Did he ever tell you about any plans that
6 he had for the SNM?

7 A. He did. He broke down a little what he
8 wanted. He had plans. He wanted to move it in the
9 right direction, because during the past there was
10 many fractions amongst us, and he would talk about
11 it. He wanted to break it down into rayos of -- the
12 Zia is our sign, the Zia symbol. And each ray that
13 comes off, he wanted to break it into the counties,
14 where a certain county would have a couple -- let's
15 say, I'm going to use ours -- would be Luna, Grant,
16 and Hidalgo County would be, and they'd have their
17 own sergeant. He had a plan to move us all forward
18 and repair us. Like I say, we were real fractioned.
19 We had a bunch of fractions amongst us and he was
20 trying to repair all that.

21 Q. Now, you said there were some factions
22 amongst you. Who is the "us"? I should say, who
23 was the "us"?

24 A. Other SNM members were constantly arguing
25 with -- amongst each other, say, oh, well --

1 Q. I don't want to get into what they say.
2 But I guess, let me ask this. Were there different
3 factions at various times throughout the time that
4 you had been with the SNM?

5 A. Yes, ma'am.

6 Q. But would you still consider it one
7 organization?

8 A. Yes, ma'am, it is.

9 Q. And the plan that Mr. Baca, Anthony Baca,
10 spoke to you about -- did you buy into that plan?

11 A. I did.

12 Q. And why is that?

13 A. Because I looked up to him. And like I
14 say, when he was explaining it to me, it made a lot
15 of sense. And at that point in time I wanted to see
16 the SNM move forward. You know what I mean? And so
17 the way he broke it down and explained everything to
18 me, it was a good plan where everyone could get back
19 on track, on the same agenda, and move forward and
20 actually achieve objectives and be more than just
21 in-house, more where we could expand our horizons on
22 the street and expand the enterprise out there on
23 the streets, as well.

24 Q. Did you supply Anthony Baca with drugs?

25 A. Yes, ma'am. I would give him Suboxone

1 before.

2 Q. Now, I'm going to show you some
3 photographs.

4 MS. ARMIJO: Your Honor, I'm going to move
5 for the admission of Exhibits 491 and 763, 764 and
6 765, without objection, I believe.

7 THE COURT: Any objection from the
8 defendants?

9 MR. VILLA: No, Your Honor.

10 THE COURT: All right. Not hearing any
11 objection, the Court will admit Government's
12 Exhibits 491, 763, 764 and 765.

13 (Government Exhibit 491, 763, 764, and 765
14 admitted.)

15 BY MS. ARMIJO:

16 Q. All right. If you can please start by
17 displaying Exhibit 491. Mr. Martinez, do you
18 recognize this photograph?

19 A. Yes, ma'am.

20 Q. How so?

21 A. Well, first of all, I'm in it, and I
22 remember taking it. It was taken here in Southern
23 New Mexico, here in Cruces.

24 Q. And where are you in the photograph?

25 A. I'm the one that's kneeling down.

1 Q. Okay. Is that you that I drew a red line
2 under?

3 A. Yes, ma'am.

4 Q. All right. And who is this individual
5 here?

6 A. That would be Anthony Baca.

7 Q. And I drew -- for the record, I drew an
8 arrow to the person on the left of the photograph.
9 And who is this person here in the middle?

10 A. That's Javier Molina.

11 Q. Javier Molina?

12 A. Yes, ma'am.

13 Q. And who is the other individual in the
14 photograph?

15 A. That would be Jeffrey Madrid.

16 Q. Are all those people SNM Gang members?

17 A. Yes, ma'am.

18 Q. And do you recall approximately when this
19 photograph was taken?

20 A. I want to say in 2013. I can't really say
21 the months, give or take, but I know it was probably
22 the middle of 2013.

23 Q. All right. And I'm going to show Exhibit
24 Number -- and then there's a couple of other
25 pictures while we're showing pictures. Let's go to

1 Exhibit Number 763.

2 All right. Are you in this photograph as
3 well?

4 A. Yes, ma'am.

5 Q. And where are you?

6 A. I'd be the top left, standing.

7 Q. All right. Is that you there? I drew an
8 arrow on the top left side.

9 A. Yes, ma'am.

10 Q. Okay. And who is this individual here
11 that I drew an X on? He's two persons down from you
12 in the photo.

13 A. That would be Jake Armijo.

14 Q. And who is the person with his arms
15 crossed next to Jake Armijo?

16 A. Roy Rogers Montano.

17 Q. And where was this picture taken?

18 A. This was also taken at the Southern New
19 Mexico Correctional Facility here in Cruces.

20 Q. Are the people in this photograph SNM Gang
21 members, or are there some that are just associates?

22 A. They're all confirmed SNM Gang members.

23 Q. All right. I'm going to go to Exhibit
24 Number 764. And are you in this photograph, as
25 well?

1 A. Yes, ma'am.

2 Q. And which one is you?

3 A. I'd be the bottom left one in the front
4 row.

5 Q. Okay. Holding up your fingers in the air?

6 A. Like a "what's up" sign, right.

7 Q. I was going to say a peace sign.

8 A. Peace. What's up.

9 Q. A "what's up" sign. There on the bottom
10 left. And who is next to you on the bottom?

11 A. Jerry Montoya.

12 Q. And are the other individuals -- where was
13 this picture taken?

14 A. This was also at the Southern New Mexico
15 Correctional Facility here in Cruces.

16 Q. And what are the bottom ones?

17 A. Those are all drawings done by another SNM
18 Gang member, Steven Morales; he had drawn those.

19 Q. Is Steven Morales in this picture?

20 A. Actually, he's not, ma'am.

21 Q. All right. He drew that?

22 A. Yes.

23 Q. All right. Which I believe has a Duke
24 City; is that correct?

25 A. Yes, ma'am.

1 Q. And I'm going to say a cartoon figure of
2 Our Lady of Guadalupe, maybe?

3 A. Yes, ma'am.

4 Q. And a little gangster?

5 A. Yes, ma'am.

6 Q. And was he a Lobos fan?

7 A. Actually, no. The Duke City and the Lobos
8 were drawn for Mr. Jerry Montoya, who is from
9 Albuquerque, New Mexico.

10 Q. All right. I won't hold that against him.
11 Now, let's go to Exhibit Number 765. Are
12 you in this photograph, as well?

13 A. Yes, ma'am.

14 Q. And where are you?

15 A. I'm the bottom right, the one kneeling.

16 Q. All right. Is that you?

17 A. Yes, ma'am.

18 Q. And when was this picture taken?

19 A. This one was also taken in 2013.

20 Q. And do we see -- who is the person on the
21 top here that I'm circling in the middle?

22 A. That would be Javier Molina.

23 Q. You were friends with Javier Molina?

24 A. Yes, I was very good friends with him.

25 Q. Now, are you also -- do you know Daniel

1 Sanchez?

2 A. Yes, ma'am.

3 Q. Do you see him in the courtroom today?

4 A. Yes, ma'am.

5 Q. Where is he?

6 A. He's in the first chair on this first
7 table over here.

8 Q. Is he wearing a jacket?

9 A. No, he's wearing glasses, shirt, and a
10 tie.

11 MS. ARMIJO: May the record reflect
12 identification of Daniel Sanchez?

13 THE COURT: The record will so reflect.

14 BY MS. ARMIJO:

15 Q. Does he look different today than when you
16 knew him?

17 A. He's got a little more hair right now, but
18 other than that, he's looking all right. Actually,
19 a pretty good haircut, one of his better ones.

20 Q. When did you meet Daniel Sanchez?

21 A. I met him when he first got down to
22 Cruces. I'd heard about him, as well, through
23 Javier Molina, and actually a bunch of other
24 members. But I had the opportunity to meet him in
25 Cruces when he got there.

1 Q. And when he got there, where did he --
2 where was he housed?

3 A. He was --

4 Q. Meaning was he housed in your pod?

5 A. Yes, ma'am.

6 Q. And what was your relationship with Mr.
7 Sanchez?

8 A. Could you -- what do you mean?

9 Q. Well, I mean, did you get along with him?

10 A. We've had our disagreements in the past.
11 We didn't always see eye to eye on a lot of stuff,
12 but I --

13 Q. Do you know what his position was?

14 A. He was the leader. He was the key-holder
15 of that pod.

16 Q. What do you mean by key-holder?

17 A. He was the -- in the SNM, there's
18 considered a tabla, which is like a panel of
19 different members for each -- and they make the
20 decisions. He was in charge of our pod.

21 Q. So was he the leader in the pod that you
22 were staying?

23 A. Yes, ma'am.

24 Q. And you mentioned that you had issues with
25 him. Even though you had issues with him, given

1 that he was -- you said that you're a soldier, and
2 he's a leader. Would you still follow him, follow
3 his --

4 A. I have to. According to SNM law and the
5 codes we follow, I have to.

6 Q. Do you have an SNM tattoo?

7 A. Yes, ma'am, I do.

8 Q. Did you always have that SNM tattoo?

9 A. No, I didn't. It's -- in order to get the
10 actual SNM, you have to have put in work. By work,
11 I mean by stabbing someone, trying to kill someone,
12 or actually killing them.

13 Q. Now, I'm going to -- when you were
14 arrested in this case, I believe you said it was
15 December of 2015, did you have an SNM tattoo?

16 A. No, ma'am. I have many Zias on me, but
17 none of them actually contained the SNM in it.

18 Q. Okay. What's the significance of that?

19 A. The SNM is -- it's like your patch of
20 honor. Once you finally do put in work, it's an
21 honor to actually get the SNM put on you. Having
22 the Zia, like I say, the Zia is our flag. We all
23 represent the state, so the Zia is a very sacred
24 image. But to actually have the SNM means that
25 you've put in work, that you've actually gone

1 through and ordered hits or sanctioned hits.

2 Q. And what SNM tattoo did you get on you
3 since your arrest in this case?

4 A. I received -- I was in Torrance County,
5 out in Estancia, in the federal hold, and I -- it's
6 an undercover one. It's through the roses right
7 here. I have an S, then the NM there in the
8 shading. And I was allowed to actually get it
9 because I put in work.

10 Q. All right. I'm going to show Exhibit
11 Number 562, which I believe is in evidence.

12 MR. JEWKES: Your Honor, I'm sorry, would
13 Ms. Armijo repeat that? She turned away.

14 MS. ARMIJO: I'm sorry, 562.

15 BY MS. ARMIJO:

16 Q. Who that is a picture of?

17 A. That's me.

18 Q. I notice in this picture that your arms
19 from your elbow down do not have tattoos; is that
20 correct?

21 A. Yes, ma'am.

22 Q. And if you can, can you stand up for the
23 jury? Okay. It now appears that you have tattoos
24 from your elbows down?

25 A. Yes, ma'am.

1 Q. Okay. You can sit down. And you
2 indicated -- who gave you those tattoos?

3 A. Another SNM Gang member, Christopher
4 Chavez.

5 Q. Were you supposed to be getting tattoos
6 in, you said, Torrance?

7 A. No. It's against the rules. You're not
8 supposed to get any kind of tattoos while you're
9 incarcerated. If I was caught, I could have got a
10 write-up a disciplinary infraction, I would have to
11 go to Seg, possibility of Seg time.

12 Q. Now, I'm going to show Exhibit Number 564.
13 And is that your back?

14 A. Yes, ma'am.

15 Q. Who gave you that that tattoo?

16 A. Dan Dan Sanchez. Daniel Sanchez.

17 Q. Okay. You said Dan Dan. Does Daniel
18 Sanchez have a nickname in the gang?

19 A. Dan Dan.

20 Q. And when did he give you this tattoo?

21 A. We were in blue pod right there in
22 Southern New Mexico, probably, I'd say, 2013, end of
23 2013.

24 Q. And is there anything significant about
25 this as you look at it as far as in relationship to

1 SNM?

2 A. Yes. Actually, Dan wouldn't allow me to
3 get the S, because I hadn't put in work at that
4 time. But in significance, the number 19 is very --
5 it's one of our numbers. S is the 19th letter in
6 the alphabet. So Sindicato. So in the gun belt of
7 the charronda, top left side of this picture there's
8 19 bullets representing the S. But he wouldn't give
9 me the actual S, because I hadn't put in work yet.

10 Q. And is that what he told you?

11 A. Yes, ma'am.

12 Q. And I circled a gun belt. Is that the gun
13 belt that you were referring to?

14 A. Yes, ma'am.

15 Q. Now, when you say put in the work, you
16 talked about all your narcotic activities. Is there
17 a different type of work that you need to put in?

18 A. Yes, ma'am, the S is, like I said and
19 opened with, they're known for violence. In order
20 to put in work and get the patch of an actual SNM,
21 you got to commit acts of violence, whether it be --
22 the objective is always to try to kill an individual
23 that's marked for a hit. So you stab them, strangle
24 them, whatever the case may be. So when I'm saying
25 to put in work, that's what I mean, to actually put

1 in an act of violence.

2 Q. Now, you indicated that Daniel Sanchez had
3 done that tattoo for you, but you also had said you
4 weren't the best of friends with him.

5 A. No.

6 Q. So how is it that he did the tattoo on
7 your back?

8 A. Well, it was -- we had our disagreements
9 in the past, we had altercations in the past. And
10 it was his way, I guess, you could say he -- like an
11 offering, All right, I'll do the work on you. He
12 was starting out -- he had barely started tattooing,
13 really. I'm one of actually his -- not his
14 first-first person he tattooed on, but one of his
15 first. So he said, "Let me work on you."

16 And I said, "All right. I'll let you work
17 after you do a few people. These are going to be on
18 me for the rest of life." I said, "You've got to
19 get a little better."

20 So he worked on some people, and then it
21 came about where he got good enough, and I let him
22 work on my back.

23 Q. Again, is this allowed within the New
24 Mexico Corrections Department?

25 A. No, ma'am. Once again, if we would have

1 got caught, we could have both ended up with
2 disciplinary infractions, which could have led us to
3 many sanctions, from severe, going to segregation,
4 to something as simple as loss of commissary
5 privileges or phone call privileges.

6 Q. Carlos Herrera. Are you familiar with
7 that individual?

8 A. Yes, ma'am.

9 Q. Do you see him in the courtroom?

10 A. Yes, ma'am.

11 MS. BHALLA: Your Honor, we stipulate to
12 his identity.

13 THE COURT: Does that work for you, Ms.
14 Armijo?

15 MS. ARMIJO: Yes, Your Honor. Thank you.

16 BY MS. ARMIJO:

17 Q. And were you housed at Southern with
18 Carlos Herrera?

19 A. Yes, ma'am.

20 Q. Was he in the same pod or a different pod?

21 A. He was in an adjoining pod to us. He was
22 in the pod next door to us.

23 Q. Did you sell drugs to him?

24 A. Yes, ma'am.

25 Q. Rudy Perez. Are you familiar with Rudy

1 Perez?

2 A. Yes, ma'am.

3 Q. Do you see him in the courtroom?

4 A. Yes, ma'am.

5 MR. VILLA: We'll stipulate, Your Honor.

6 THE COURT: Does that work, Ms. Armijo?

7 MS. ARMIJO: Yes, Your Honor. Thank you.

8 BY MS. ARMIJO:

9 Q. Was he in the same pod as you?

10 A. Yes, ma'am.

11 Q. Was -- did you -- let me go back to Carlos
12 Herrera. The pod that Carlos Herrera was in, was
13 that an SNM pod, as well?

14 A. Yes, ma'am. The unit we lived in was all
15 SNM members. It consisted of three pods which
16 housed 48 cells.

17 Q. And I forgot to ask, but was Carlos
18 Herrera an SNM Gang member?

19 A. Yes.

20 Q. Rudy Perez. Was he an SNM Gang member?

21 A. Yes, ma'am.

22 Q. And did you know Rudy?

23 A. Yes, ma'am, I do. Actually, he's -- I
24 consider him a friend.

25 Q. Now, at the time that he was at -- that

1 you were at Southern with him, was he there in the
2 same pod as you most of the time, if you recall?

3 A. Yes, ma'am.

4 Q. Okay. Did you do anything for Mr. Perez?

5 A. I did. Like I say, I consider Rudy a true
6 friend. I liked him as an individual. You guys
7 have all seen he's not in the best of shape. And
8 ever since I've known him, he's always had medical
9 issues.

10 And I took a liking to him. I helped him
11 out with canteen when he didn't have money. I ran a
12 store, which by that I mean I bought commissary
13 items and ran it just like any little Allsup's, or
14 whatever, you guys would walk into it. Anyone from
15 the unit could come to me, "Hey, I need to get two
16 soups."

17 "All right, I'll give two soups. You give
18 me three back."

19 I ran it on a get-two-pay-back-three. So
20 Rudy didn't always have money. I helped him out
21 with canteen.

22 Q. Would you front it to him, or actually
23 give it to him?

24 A. I've done both. I've given him food. He
25 always would try to come back and pay me. You know

1 what I mean? He's a good guy. Me and him are good
2 friends. Like I say, I've given him food before.
3 He'd come back and try to pay me for some food.
4 I've given him drugs before because he doesn't
5 always have a lot of money or whatever. Like I
6 said, I liked him. I'd look out for him.

7 Q. Did you ever go out to rec with him?

8 A. Yes, ma'am, a few times.

9 Q. So he would on occasion go out to rec?

10 A. Yes, ma'am.

11 Q. And you indicated that -- would you give
12 him drugs on occasion?

13 A. Yes, ma'am.

14 Q. What drugs would you give him?

15 A. Mainly Suboxone.

16 Q. And is he an SNM Gang member?

17 A. Yes.

18 Q. I'm going to go specifically now to March
19 7 of 2014. Do you recall that day?

20 A. Yes, ma'am.

21 Q. Now, you were already -- you indicated
22 that you were in the same pod as Rudy Perez; is that
23 correct?

24 A. Yes, ma'am.

25 Q. Okay. I'm going to mention some people,

1 and tell me if you know them and if they were in
2 your pod. Mario Rodriguez?

3 A. Yes.

4 Q. Do you know Mario Rodriguez?

5 A. I know Mario very well. We grew up
6 together.

7 Q. Was he in your same pod?

8 A. Yes, ma'am.

9 Q. What's his nickname?

10 A. Blue.

11 Q. By the way, what's your nickname?

12 A. Red. Go figure.

13 Q. And do you know why you're called Red?

14 A. Why I'm -- well, it's kind of stuck with
15 me since I was born. I can't outrun it. I wasn't
16 lucky enough to get a cool nickname. They said,
17 "Oh, Red," then it stuck ever since I was a little
18 kid. So I think it has something to do with the
19 hair.

20 THE COURT: Ms. Armijo, would this be a
21 good place for us to take our morning break?

22 MS. ARMIJO: Yes, Your Honor. Thank you.

23 THE COURT: We'll have a late lunch, so
24 we'll take our break now. We'll be in recess for 15
25 minutes.

1 (The jury left the courtroom.)

2 THE COURT: Deputy Mickendrow gave me a
3 report about the contact yesterday between Gloria
4 Molina and one of the jurors, where she offered her
5 a cough drop. So I'll mark this as an exhibit to
6 Clerk's Exhibit M, as in Mary. If y'all want to
7 take a look at it, get more detail there. But it
8 looks like in the bathroom she offered her a cough
9 drop, if y'all want to look at that. If I don't
10 hear anything from you, we'll just keep moving.
11 Otherwise y'all can raise it after the break.

12 All right. We'll be in recess for between
13 15 minutes.

14 (The jury entered the courtroom.)

15 THE COURT: Got your medicine back there?
16 Good. All right.

17 Mr. Martinez, I'll remind you that you're
18 still under oath.

19 Ms. Armijo, if you wish to continue your
20 direct examination of Mr. Martinez, you may do so at
21 this time.

22 MS. ARMIJO: Thank you, Your Honor.

23 THE COURT: Ms. Armijo.

24 BY MS. ARMIJO:

25 Q. I believe you were talking about March 7,

1 2014. Different people in your pod. Jerry Armenta?

2 A. Yes, ma'am.

3 Q. And what about Jerry Montoya?

4 A. Yes, ma'am.

5 Q. Daniel Sanchez?

6 A. Yes, ma'am.

7 Q. Ronald Sanchez?

8 A. Yes, ma'am.

9 Q. And I believe we already talked about Rudy
10 Perez?

11 A. Yes, ma'am.

12 Q. Are you aware of whether or not Carlos
13 Herrera was in the unit?

14 A. He was in the unit. He was in the pod
15 next to us.

16 Q. Now, on March 7, 2014, did you have any
17 special assignments that you were doing for
18 Corrections that day?

19 A. I had a job which was -- we'd -- every
20 morning we'd go -- or my job was to refurb
21 wheelchairs. It was called Wheels for the World.
22 It was a program where we went and refurbished old
23 wheelchairs from the ground up, everything, and we'd
24 fix them up. And it's actually a really great
25 program. After they're fixed, they pack them up,

1 put them in a semi, and they'd actually ship them to
2 third-world countries for the less fortunate. You
3 know what I mean? So that was my job at the prison.

4 Q. And is that something that you volunteered
5 for?

6 A. Yes. Actually, the -- that program was
7 given to the SNM. It was a pilot program. It was
8 brand new. They had just started that program at
9 the prison. And it opened up with eight
10 individuals, and they were all selected from the SNM
11 unit, which was 1-A.

12 Q. And were you one of those persons?

13 A. Yes, ma'am.

14 Q. And did you work the wheelchair program
15 that day?

16 A. Yes, ma'am.

17 Q. Now, do you recall coming back from the
18 program in the afternoon?

19 A. Yes.

20 Q. Let me ask you this. What were your hours
21 when you worked at the program?

22 A. The CO would usually come pick us up
23 around 7:30 a.m. and we'd stay there all day long.
24 We'd eat lunch. We worked out of an old auto bay.
25 We'd eat lunch there. Our day would usually --

1 workwise would end a little after 3:10, 3:15.
2 They'd strip-search us, everything. And then by the
3 time we got back to the unit, it was usually -- once
4 they got done strip-searching everybody, it was
5 about 3:40, 3:45 ish.

6 Q. Why were you strip-searched after being in
7 the program?

8 A. Well, in that program you're using a lot
9 of tools, a lot of sharp metal. You have chisels,
10 screwdrivers, saws, parts of actual metal from
11 medical equipment. So they wanted to strip-search
12 us to make sure that we weren't trying to smuggle
13 anything back to the unit.

14 Q. And would they strip-search you or go
15 through a metal detector, both?

16 A. It was an actual physical search where we
17 take off all our clothes and hand them to the COs.
18 They check all your clothes, squat, cough, make sure
19 you're not trying to hide anything in there. So it
20 was a physical search.

21 Q. You mentioned weapons. Did you have a
22 shank that you kept -- like, I'm not talking about
23 that day -- just in general, while you were at
24 Southern?

25 A. Yes, ma'am.

1 Q. Was that common within the SNM?

2 A. It's very common. It's very common. In
3 fact, that's actually one of the first things they
4 teach us when we become SNM members, is how to make
5 weapons, how to make shanks. So pretty much
6 everyone -- anytime we need one, if they didn't have
7 one, they knew how to make them. So it's a common
8 practice to have shanks.

9 Q. When you left the wheelchair program that
10 day, did somebody meet with you and have a
11 discussion?

12 A. When I got home from work, my pod were all
13 outside. It was their rec time. We had a little
14 yard right there by our unit. They were out there.
15 So when I walked in, Mario Rodriguez was waiting for
16 me, and he engaged me in conversation, small talk,
17 and then that's -- he told me that some paperwork
18 had came in.

19 Q. Okay. And "paperwork." What did you take
20 that to mean?

21 A. Paperwork is referring to any kind of
22 police reports or statements that you give any
23 correctional officers or any law enforcement agency.

24 Q. Now, did he immediately talk to you about
25 the paperwork, or did he request something first of

1 you?

2 A. No, well, when we got there, small talk,
3 like, "How was your day?" I mean, and it caught me
4 off guard. Because like I mentioned earlier, I
5 really don't get high, and that was one of the
6 things he says, "Hey, carnal, go get high."

7 I was like, "Go what?"

8 He says, "Go get high."

9 I said, "No, man, you know I don't mess
10 around like that."

11 He says, "Man, just please go get high."

12 "No, I'm not going to get high. If you
13 want to get high, just ask me. I'll give you some."

14 He's, like, "No, it ain't even that."

15 And that's when he sat me down and says,
16 "Let me explain to you what's going on," and that's
17 when he explained about the paperwork getting there.

18 Q. And what paperwork was that?

19 A. It was paperwork on Javier Molina. We
20 were actually waiting on two sets of paperwork, and
21 only one showed up, which happened to Javier Molina.

22 Q. What other paperwork were you waiting for?

23 A. We were waiting on paperwork on Jerry
24 Montoya.

25 Q. And you say "we." Who are you referring

1 to?

2 A. The SNM.

3 Q. Now, you said that the paperwork on Javier
4 Molina showed up. And what did you take that to
5 mean?

6 A. That the paperwork showing that he had
7 cooperated at some point with any kind of law
8 enforcement, whether it be a police force out on the
9 streets, or even institutional, all the hidden
10 little kites. When I say "kite," little notes that
11 they pass correctional officers, such as the STIU
12 and stuff. So there was proof that he had informed
13 on some -- in the criminal world, it's bad to tell
14 on people. It's -- oh, wow, that's what I'm doing
15 now. It's -- in that world, any kind of paperwork,
16 if you've ever informed on anybody in any kind of
17 crime, it's punishable by death in the code of
18 conduct that we lived.

19 Q. So once he said the paperwork was here on
20 Javier Molina, what was your reaction to that?

21 A. I was sad.

22 Q. Javier Molina -- was he a friend of yours?

23 A. He was a very good friend of mine. You
24 know what I mean? At first, when he said, "The
25 paperwork is here," right away I said, "All right,

1 well" -- because we were waiting on both. So when
2 he said paperwork, I assumed both of them. I said,
3 "Well, if I've got to go, I'll go get Jerry."

4 He says, "No." That's when he told me
5 only one set showed up, and it was Javier. And I
6 was sad. I was sad. And I was, like -- he just
7 explained it where he was like, "Man, the paperwork
8 is here, Dan -- we've seen it, me and Dan have seen
9 it. We've gone over it. It's real."

10 Because you've got to make sure the
11 paperwork is real. You can't just make moves
12 without -- so Daniel and Mario had both seen the
13 paperwork and said it was real. And that's when he
14 told me that, "Dan wants you to go." I mean, it was
15 my time to start putting in work. And by "work,"
16 committing an act of violence. Because like I said,
17 I'd been drug-dealing, but actual put in violence
18 for the SNM.

19 Q. So you were told that Daniel Sanchez
20 wanted you to go?

21 A. Yes, ma'am.

22 Q. Now, was there a plan specifically of what
23 your role would be in this?

24 A. Yes, we're talking, he's further
25 explaining it. He says, "Dan wants you to go."

1 And I said, "Man, why?"

2 He says, "Well, just -- you've got to go,
3 Dan is making you go."

4 I said, "All right. What do I got to do?"

5 And he said, "Dan just wants you to go in
6 there and beat him up."

7 Prior to this, I've had training in mixed
8 martial arts, my military MCMAP training, which is
9 Marine Corps Martial Arts Program. So I've had
10 training in hand-to-hand combat.

11 So he says, "Daniel knows you can knock
12 him out. He wants you to go in there, knock him
13 out, where he can't get out of the cell. And that's
14 when he says Jerry Montoya and Jerry Armenta are
15 going to go in and stab him." He said, "We've made
16 fierros." And by "fierros," I mean shanks. "We're
17 going to give them to them, and they're going to go
18 in and stab him. All you got to do is go in there
19 and knock him out, make sure you knock him out good
20 enough where he can't leave the room."

21 Q. And what did you do at that point?

22 A. I was in shock. So I was, like, "Well,
23 yeah, I think I'm going to take you up on that. I
24 think I'm going to go get high now." You know what
25 I mean?

1 Yeah, that was my buddy. I didn't want to
2 see him dead. I didn't want to see that happen.
3 But I knew in the life that we chose, the life that
4 we were living, that it's either you do the work,
5 and you don't have a say-so when you're at my level,
6 just being a soldier. I had to follow orders.

7 Q. Now, are you aware of whether or not
8 Javier Molina had a shank?

9 A. Yes, he did.

10 Q. Did he have a shank that day?

11 A. He did. He actually -- he had a shank
12 made out of a handle of a crutch. And during this
13 conversation with Mario, we're talking. And like I
14 said, it ended like, "Yeah, I think I'm going to get
15 high."

16 He said, "You're going to be all right.
17 I've been through it. You'll be all right."

18 So as I'm walking up the stairs, the rest
19 of the pod starts coming in from yard. As they're
20 coming in -- like I say, me and Javier were really,
21 really good friends. He comes up, "Hey, brother,
22 what's going on, carnal? Are you doing all right?
23 How was work?"

24 "It was good. It was good."

25 I couldn't make eye contact with him at

1 that time, because I knew what was going to happen.
2 So he's, like, "Work was good." You know what I
3 mean, small talk. "It was real good."

4 And he says -- you've got to remember, I
5 got home about 3:40, 3:45. At 4:00 there is a count
6 where they lock us in our rooms to count all the
7 people in prison, make sure no one has left. So
8 they come in, I'd say, about a little after 3:50 or
9 so, give or take, or a little afterwards.

10 Q. This is after your conversation --

11 A. This is right after, when they're coming
12 in, after my conversation with Mario.

13 So he comes in all sweaty from playing,
14 whatever, handball, or whatever he was doing
15 outside. He says, "I'm going to take a shower. Can
16 you hold this for me?"

17 MR. JEWKES: Your Honor, we would object
18 to the narrative fashion.

19 THE COURT: Why don't you break it up a
20 little more question and answer.

21 BY MS. ARMIJO:

22 Q. And so you said that Mr. Molina asked you
23 to hold something?

24 A. Yes, he asked me to hold his shank,
25 actually. He had a shank on him. It was tied

1 inside his waistband.

2 Q. What did he do with it?

3 A. He took it out and gave it to me. So he
4 gave it to me. I put it in my waistband. And he
5 proceeded into his room, got all his stuff for the
6 shower, and went and took a shower.

7 Q. And then where did you go at that point?

8 A. At that time I was still going towards my
9 room. So I'm in my room. I start making a coffee,
10 getting nervous. My nerves are going.

11 Q. And did you at that point have Javier
12 Molina's shank with you still?

13 A. Yes.

14 Q. And when you go into your room, at that
15 point is count going to begin soon?

16 A. Yeah. We're just waiting, pretty much, on
17 the COs to come in and start count. So they came in
18 right away, a few minutes after the fact. He was
19 still in the shower, and that's when the COs came in
20 to start doing count.

21 Q. And then are you locked in your cell
22 during count?

23 A. Yes, ma'am, we're locked in from 4:00 to
24 5:00, a little after 5:00 sometimes. It doesn't
25 always clear exactly at 5:00. It's whenever they're

1 done with all the counts, get all the paperwork
2 turned in. But the initial count is supposed to be
3 from 4:00 to 5:00.

4 Q. Now, you mentioned that your part was
5 to -- you were instructed that you were to hit
6 Javier Molina, and then Armenta and Montoya were to
7 come in. Was Javier Molina -- what was his stature
8 like in comparison to you and Armenta, Montoya?

9 A. He's shorter than me, taller than the
10 Jerrys, both Montoya and Armenta. He had me -- he
11 was real stocky, he was real wide. He was a good --
12 I was weighing about 170, so he had me about a good
13 40, 45 pounds, stockywise. He was a little
14 aggressive. I mean, he had that aggressive build.
15 You could tell, like, you know what I mean, he's
16 thick, and he had boxed in the past and stuff, so he
17 had a little heavy stature.

18 MR. JEWKES: Your Honor, once again, he's
19 testifying in a narrative fashion.

20 THE COURT: Just a little more Q and A.

21 BY MS. ARMIJO:

22 Q. When you went -- during count, you were in
23 your room; is that correct?

24 A. Yes, ma'am.

25 Q. All right. And I believe you indicated

1 previously that you were a little bit nervous?

2 A. Yes, ma'am. I was a lot of bit nervous.

3 Q. And at some point, did you have a
4 conversation with anybody?

5 A. Yes, ma'am. I had spoke with Dan, Daniel
6 Sanchez.

7 Q. Okay. Now, before you go into that, where
8 was your cell in relationship to Daniel Sanchez'
9 cell?

10 A. Me and Daniel both lived on the top tier
11 in blue pod. I lived in cell 108 -- I believe the
12 number was 108. His was 107. I had the very corner
13 room, and he was my neighbor. He was the only
14 neighbor I had in blue pod. The next room would
15 have been yellow pod, so...

16 Q. So then -- and how is it that you were
17 able to speak to him?

18 A. There's vents, the HVAC vents, air
19 conditioning and stuff. And the vents -- there's
20 one on the roof that blows air out, and then the
21 exhaust is on the bottom. And if you get down and
22 look through the bottom vent, you can actually see
23 right into the room that's next to you.

24 So I was -- me and Daniel were actually
25 able to see each other, if we got down there, and we

1 could see each other and have a conversation just
2 like -- I'd say, all together, the space between us
3 was maybe three or four feet. So it's real easy to
4 hear each other. We could see -- like I said,
5 there's a vent with big squares that you see right
6 through the grating on it. So I was able to talk to
7 him that way.

8 Q. And I'm going to put -- well, actually, I
9 think we have it. 751. All right. And are you
10 familiar with not the writing, but with the diagram?

11 A. Yes, ma'am.

12 Q. All right. And I'm looking at 108 on
13 Exhibit 751. Would that be your room?

14 A. Yes, ma'am.

15 Q. And right next to you says "Daniel S."
16 Would that be where Daniel Sanchez was?

17 A. Yes, ma'am.

18 Q. Okay. Now you indicated that you had a --
19 did you have a conversation with Daniel Sanchez?

20 A. Yes, ma'am.

21 Q. And who started that conversation?

22 A. Daniel. I was in there. When I went in,
23 I got high.

24 Q. And why did you get high?

25 A. Because I was nervous. I was trying to

1 calm my nerves. I've never done anything like this
2 before. So when I went in, I got high. I was
3 pacing back and forth. And that's when I heard a
4 knock on the wall.

5 Q. Okay. And what did you take that knock to
6 be?

7 A. Daniel Sanchez trying to get my attention.
8 So the vents are right there, located between that
9 little wall and the toilet area, pretty much where
10 my name is, where you see "Tim"; there is a vent
11 right there in between that little wall right there.

12 Q. Okay. I'm putting my finger right
13 between, I guess, two toilets. Is that about right?

14 A. Yes, it's the plumbing ducts and stuff in
15 there. That's where the vents run through.

16 So I hear a knock on the wall.

17 Q. And what do you do?

18 A. I go down and I say, "What's up, carnal?"

19 He said, "Blue rapped you?"

20 I said, "Yeah, si mon, he got at me."

21 He was like, "You know what you got to do;
22 right?"

23 I said, "Yeah, yeah." I said, "Yeah."

24 And we started talking. And he was like --

25 Q. And what did he say?

1 A. Pretty much he was, like, "You know you
2 got to do this. You got to earn your huesos. It's
3 your time to earn your huesos right now."

4 Q. I'm going to stop you. What is "huesos"?

5 A. Huesos is the Spanish term for bones,
6 which, in the prison culture, earning your bones is
7 when you actually put in work, and by "work," once
8 again, it's committing acts of violence in the SNM's
9 case.

10 Q. So he said you got to earn your huesos.
11 Did he continue to talk to you?

12 A. Yeah, we had a conversation. I said,
13 "Yeah, yeah, all right."

14 And I talked to him. I said, "Well, why
15 do we have to kill him?" You know what I mean?

16 MR. JEWKES: Your Honor, again we object
17 to testifying in a narrative fashion.

18 THE COURT: Just ask a little more Q and
19 A; try to break him up a little bit.

20 BY MS. ARMIJO:

21 Q. Did you continue to talk to him?

22 A. Yes, ma'am.

23 Q. What did he say?

24 A. He went on to say that pretty much that we
25 need to put in this work. The S is about violence.

1 He says the S has always earned its reputation
2 through violence, and that we couldn't be like any
3 of the other cars anymore. And by "cars" I mean the
4 other prison gangs. He says, "All the other prison
5 gangs, they're just jumping people and beating them
6 up. We're not going to do that no more."

7 Q. And did he say anything else?

8 A. He said -- yeah, he said pretty much that
9 "This is how it has to be. We get our respect.
10 We're not going to be like them. We're taking it
11 back to the old ways, back when the SNM was feared
12 and respected through our violence," you know what I
13 mean? "We're going to start doing it so people know
14 there's consequences, so people" -- and for people,
15 it's both -- I took it to mean not only SNM members,
16 but other individuals in prison yards, that they'll
17 know that, hey, the SNM ain't playing no more. They
18 ain't just going to beat you up; they're going to
19 stab you, they're going to try to kill you.

20 Q. Now, what was your reaction to this?

21 A. I was, like, "Man, why do we have to kill
22 him?"

23 I'm still trying to lobby. Like I said,
24 Javier was my friend. I'm still trying to lobby for
25 him, saying, "Well, why do we have to kill him," you

1 know what I mean? There's been other people that
2 have come through with paperwork and we've just beat
3 them up and made them leave.

4 And once again, that's when he reiterated,
5 "The S is about violence. We're not like the other
6 cars. We're going back to the old ways."

7 MS. DUNCAN: I object to the narrative.

8 THE COURT: You're going to have to ask
9 more questions.

10 MS. ARMIJO: All right. Your Honor.
11 Sorry about that.

12 BY MS. ARMIJO:

13 Q. Now, when he said -- when he was telling
14 you -- you indicated that you were asking him why
15 this had to be done; correct?

16 A. Yes, ma'am.

17 Q. And what was his answer?

18 A. Because the S is about violence. That's
19 how we get our respect; that we're no longer going
20 to be like the rest of them, because he said the SNM
21 was getting watered down, that we're just beating
22 people up, and we need to go back to the old ways.

23 Q. Now, did you ask him anything in
24 particular about why you had to do this?

25 A. Yeah, I asked him, I said, "Well, why has

1 it got to be me?" And --

2 Q. And did he answer you?

3 A. Yes, ma'am.

4 Q. And what did he say?

5 A. He answered by saying, "It's your time.

6 You've got to earn your huesos. You've got to do

7 something more significant for the S. It's your

8 time to start earning your huesos."

9 Q. Now, at some point -- what happened after
10 count?

11 A. Right after count?

12 Q. Well, and then after this conversation --
13 let me back up. This conversation, did it take
14 place during count?

15 A. Yes, ma'am.

16 Q. And at some point was count over?

17 A. Yes, ma'am. It's a little after 5:00.

18 Q. And what happened when count was over?

19 A. When count cleared, Mario Rodriguez
20 appeared at my door. I was so preoccupied and high
21 by this point. He's at the door, and he says, "Hey
22 carnal. You're going to be all right."

23 He's trying to give me a pep talk, because
24 I guess he could see, like, I'd never done anything
25 like this.

1 Q. So what happened?

2 A. So he gave me the pep talk, saying, "You
3 can do this." He said, "I lobbied for you. I don't
4 want you to go."

5 Q. Okay. And then did he say anything else?

6 A. He went on to say, "But Dan is making you
7 go. Dan is the one that wants you to go. I don't
8 want you to go. I even offered to go in your place.
9 But Dan said you have to go."

10 Q. So then what happened then?

11 A. So I talked to him -- that little
12 conversation, I say, "Well, check this out, carnal.
13 You're never going to believe this."

14 Q. What were you referring to?

15 A. The shank, Javier Molina's shank.

16 Q. What did you do?

17 A. I showed him. I said, "Look what Javier
18 gave me."

19 And he says, "What? How did you get
20 that?"

21 So I explained the situation, how he gave
22 it to me to hold for him in the count, or while he
23 was at shower. And so I handed it to him and he
24 was, like, "That's good that you have it. Now he
25 can't stab you."

1 I said, "Well, yeah, that's a good thing,"
2 you know what I mean? So --

3 Q. What happened with the shank?

4 A. So I put it in a bag of canteen. As I
5 said earlier, I ran a store in the prison, so I had
6 many bags of canteen. So I just dropped it in one.
7 And I said, "Here, take this whole bag down there."

8 So he took --

9 Q. Who did you give it to?

10 A. Mario Rodriguez.

11 Q. Okay. And then what happened then?

12 A. So he takes it back to his cell -- or
13 downstairs somewhere. And I'm still in my room.
14 And that's when he comes back up --

15 Q. And who is "he"?

16 A. Mario Rodriguez. So he comes up, and I
17 tell him, I said, "Hey, check it out, carnal," I
18 said, "I'm changing the plans."

19 Q. And what did you mean by that?

20 A. He's like, "What do you mean you're
21 changing the plans? You can't change the plans.
22 It's too late to change the plans."

23 I said, "No, I'm changing the plans."

24 He said, "What do you mean?"

25 I said --

1 Q. And what did you have in mind?

2 A. Like, the original plan was for me to go
3 in there and beat him up, knock him out, so he
4 couldn't move, he couldn't get out of the cell.

5 Q. Did you come up with a different plan?

6 A. Yes, ma'am, I did. My plan was to,
7 instead of fighting him, which would have been loud,
8 and that, I'm thinking leaving DNA everywhere;
9 anything can happen in a fight.

10 Q. So what did you decide?

11 A. So my plan was, I'm just going to go in
12 there and choke him out.

13 Q. Did you know how to choke out somebody?

14 A. Yes. Being trained in mixed martial arts
15 and through the military, I know how to choke people
16 out.

17 Q. What was Mario Rodriguez's reaction to
18 that?

19 A. He said, "All right. That sounds good.
20 That works. That's even better. That way, we won't
21 get blood everywhere. During fights anything can
22 happen. I'll be right back. I'm going to go tell
23 Dan."

24 Q. And did he leave?

25 A. Yes, he left at that time.

1 Q. And where are you at this time?

2 A. I'm still in my room.

3 Q. Do you eventually come out of your room?

4 A. Yes, ma'am.

5 Q. And what do you do?

6 A. I walked in front of Javi's room. There
7 is -- as you can see right here, there's -- like the
8 top tier has like a little spot where you can walk
9 around. It's right there in between the shower and
10 105. There's a little area where can you stand.
11 And I'm standing there, and Javier comes out.

12 Q. Are you referring to where it says "upper
13 walkway," and kind of this corner area by the
14 shower?

15 A. Yes.

16 Q. Have you seen the video in this case?

17 A. Yes, ma'am.

18 Q. And can you actually in the video see
19 yourself walking on the top tier at different points
20 in time?

21 A. At different points. You can't see me
22 walk out of my room, due to the fact that the camera
23 that's facing directly at my room wasn't working at
24 the time.

25 Q. All right. And just so that we're clear,

1 we still have Exhibit 751. Javier Molina is 105; is
2 that correct?

3 A. Yes, ma'am.

4 Q. And I just circled it. So you were three
5 doors down; is that correct?

6 A. Yes, ma'am.

7 Q. And from the camera scenes, from the video
8 that we have, I believe you indicated that you could
9 not see your room?

10 A. Yes, ma'am.

11 Q. Now, was there a plan as far as how you
12 were going to get into Javier Molina's cell?

13 A. There was. Like I say, I'm known for
14 having drugs, so the plan was: Part of the
15 conversation me and Javier had had earlier prior to
16 him getting in the shower was, yes, I said, "Hey,
17 it's Friday night. Do you think we can party?"

18 He's, like, "Yeah, we'll party."

19 So the plan was to get him in his room by
20 offering him drugs and doing drugs in his house.

21 Q. And who would supply the drugs?

22 A. I'd supply them.

23 Q. And would that be unusual, or would that
24 be normal as far as the plan to go into his room and
25 do drugs?

1 A. No, it would actually be very normal
2 seeing that me, Mario, and Javier -- we were all
3 good friends, so there was no suspicion would be
4 raised if us three went into the room.

5 Q. Now, you indicate that Mario told you he
6 was going to go and tell Daniel Sanchez about the
7 change in plans. Did that happen?

8 A. I'm assuming so.

9 Q. You were not part of that conversation?

10 A. I was not part of the conversation.

11 Q. Now, at some point after Mario Rodriguez
12 left, did he return to you?

13 A. He didn't really return to me. We were
14 all up there talking on the top tier, me and Javier.
15 At the time he says, "Well, hey, let's get high."

16 I said, "Yeah, all right."

17 So at that point in the video you'll see
18 me walk back towards my room. I'm going to go get
19 some Suboxone, and I'm walking back. And at some
20 point you'll see Blue and Javier interacting and
21 stuff.

22 MR. JEWKES: Your Honor?

23 Q. What happens after that?

24 THE COURT: Hold on.

25 MR. JEWKES: We object. The witness is

1 testifying in a narrative fashion.

2 MS. ARMIJO: Sorry.

3 THE COURT: Well, try to break it up as
4 much as you can.

5 BY MS. ARMIJO:

6 Q. What happened after that?

7 A. Finally, at one point where all of us were
8 walking back from my house --

9 Q. When you say your "house," you mean your
10 cell?

11 A. Well, yeah, unfortunately. Yes, it's my
12 cell, not my house.

13 Q. Is that what you refer to when you say
14 your "house"?

15 A. Yeah. It's common for us to refer to them
16 as our "house."

17 Q. So you said you were walking back from
18 your house?

19 A. And me, Mario, and Javier, we all enter
20 Javier's room.

21 Q. Did anybody else enter the room?

22 A. No. I entered, and then Javier, and then
23 Mario. That was the order. I was far back against
24 the back wall. And then Javier would have been in
25 between me and Mario.

1 Q. So then what happened?

2 A. So we're in there. I actually pull out
3 Suboxone. And I gave a piece to Javier, I gave a
4 piece to Mario. And they're finding spoons and --

5 Q. When you say "finding spoons," what would
6 be the point of finding a spoon?

7 A. They use the drugs intravenously, they
8 shoot up, so they had to dissolve it in water, so
9 they'd place it in a spoon, and the hot water
10 dissolves it.

11 Q. And you gave it to them. Was it your idea
12 that you were going to take drugs, too, or you were
13 just supplying it to those two?

14 A. Well, like I said, I had already --
15 Javier -- when I came out of my room, I was already
16 high. And that's when Javier said, "Wow, I want to
17 be high like you."

18 MS. DUNCAN: Your Honor, it's
19 nonresponsive and a narrative.

20 THE COURT: Overruled.

21 BY MS. ARMIJO:

22 Q. Javier said he wanted to be high like you?

23 A. Yeah, he said, "Man, can I get high like
24 you?"

25 I said, "Yeah."

1 That's when I went back and got my drugs.
2 So they knew I wouldn't be doing any drugs, because
3 I was already high.

4 Q. And was it unusual for you to be high?

5 A. Very, especially that high. Like I say, I
6 hardly ever get high.

7 Q. Going back to the room, I believe you
8 indicated that you were in the back part of the
9 room; is that correct?

10 A. Yes, ma'am.

11 Q. And they were putting the Suboxone on the
12 spoon. What happened then?

13 A. At that point, I look over to Mario, and
14 he's, like, nodding at me like --

15 Q. And what did you take that to mean?

16 A. All right. Let's go. Let's get this
17 started, you know what I mean? And I didn't do
18 nothing.

19 Q. Okay.

20 A. I just stood there.

21 Q. And why didn't do you anything?

22 A. Because that was my friend. Like I say, I
23 really didn't want to see anything really happen to
24 him. That was my buddy. In a way, I wish I could
25 have warned him, but I knew I couldn't.

1 Q. So then what happened after that?

2 A. So Mario nods at me again. He's like,
3 What are you waiting on?

4 Q. That was your interpretation?

5 A. Yeah, like, let's get this started
6 already. Let's get this over with.

7 Q. And what is -- at that time, what is
8 Javier doing?

9 A. Javier is messing around waiting for his
10 Suboxone to dissolve in the spoon. We're all just,
11 I guess say, bullshitting, small talk in the room,
12 him and -- we're all just talking back and forth,
13 idle chatter, waiting for the Suboxone to dissolve.

14 Q. You said that Mario had given you kind of
15 a second nodding?

16 A. Yes.

17 Q. And what did you do?

18 A. I hesitated again. And then there was
19 either -- like I want to say one more nod, and
20 that's finally when I moved in behind him.

21 Q. And what did you do?

22 A. I caught him in a rear naked choke, which
23 is me standing behind him. My bicep would be
24 against one artery here, my forearm would be on the
25 other side. I choked him out.

1 Q. So you started to choke him?

2 A. Yes, ma'am.

3 Q. And what was Javier doing at that time
4 that you started to choke him?

5 A. He -- when I pulled my arm around him, he
6 started to reach up, I guess, to, like, grab my arm.

7 Q. Okay. And you reached up, and your arms
8 went up in a motion. Did his arms go up to, like,
9 reach towards his neck?

10 A. That's what I'm talking about. I have
11 them up here. I'm choking him. And Javier reaches
12 up to, I guess, grab my arms. I'm assuming to grab
13 my arms.

14 Q. And then --

15 A. Then Mario at that point grabs his wrists.
16 We're all standing still. He grabs his wrists, and
17 pulls his hands back down.

18 Q. Then do you continue to hold his neck?

19 A. I continue to hold his neck, ma'am.

20 Q. Then what happened?

21 A. At one point, I know that he's going out.

22 So --

23 Q. How do you know that?

24 A. Well, being a trained fighter, I've been
25 choked out myself in training sessions, and stuff.

1 So I know it don't take long to actually choke
2 someone out in that fashion. If I would have hit
3 him on an air choke, it would have been a lot
4 longer. But seeing that I hit the arteries, it's a
5 very fast and efficient way to knock someone out.

6 Q. So did he start to go down?

7 A. So at one point, you feel his body start
8 giving a little. At that point, I kicked his legs
9 out from him. And I'm still choking him, kick his
10 legs out, and I set him down.

11 Q. And then did Mario still have his hands,
12 or did he let go of his hands?

13 A. At this point, I really don't know. By
14 now, he's probably, like, going -- because as I'm
15 going down, I remember once by the time I stood up,
16 Mario had already turned around, and Jerry Montoya
17 and Jerry Armenta were seated in the corner by 101.
18 So Mario is --

19 Q. You mean 101 -- I'm referring to
20 Government's Exhibit 751 -- is the room down the
21 hall, like down here with an X on it?

22 A. Yes, ma'am.

23 Q. Which would be like at the top of the
24 stairs; is that correct?

25 A. Yes, ma'am.

1 Q. Okay. And so you indicated that you
2 turned around and you saw them coming in?

3 A. So when Mario turns around, he's motioning
4 him like, Hey. And at that point he says, "What the
5 fuck? Hurry up."

6 Q. Who was he saying that to?

7 A. He's saying it to both Jerrys. And at
8 this time, like I say, I loosened the grip on my
9 choke hold prior to putting him down. And I guess I
10 got kind of like a complex, thinking I didn't do my
11 job good enough. I'm in a zone. I don't know
12 what's really going on. So when I hear Mario say,
13 "What the fuck?" --

14 Q. What are you thinking?

15 A. I'm thinking he's onto me, like he knows I
16 didn't choke him out to my full potential.

17 Q. And did you choke him out to your full --

18 A. No, I didn't.

19 Q. -- potential? And why not?

20 A. He's my friend. And I knew -- the minute
21 I felt his legs start giving out, I loosened the
22 hold, knowing that he was going to come back, you
23 know what I mean? If I would have stayed choking
24 him, it would have taken him that much longer for
25 him to come back. So by loosening, I was trying to

1 give him a chance. You know what I mean? So -- I
2 didn't want him dead.

3 Q. So, you were -- you loosened the hold, and
4 he went down on the ground. And then you said that
5 Mario said, "What the fuck," and you thought it was
6 aimed at you?

7 A. Yeah, I did. When he was saying, "Hurry
8 up. What the fuck," he was talking to the Jerrys.
9 But I didn't really know what was going on. So when
10 I stood up, I hear him saying, "What the fuck?" And
11 like I said, I got a complex thinking, Well, shit,
12 now they know that I could have choked him out
13 better, or whatever. So --

14 Q. What did you do?

15 A. I stepped on his head. You know what I
16 mean? And I stomped about three times. The first
17 one, I made contact with his forehead. On the
18 second two I stomped like I was kind of grazing the
19 side of his head, not really hitting his head. But
20 I was hitting pretty much the floor, my brute force
21 was hitting the floor, you know what I mean? And by
22 now, both Jerrys are in there.

23 Q. So then what happens?

24 A. The Jerrys come in, all this, he's -- Blue
25 is telling them, "Hurry up, get him, get him," you

1 know what I mean?

2 Q. And what do you do?

3 A. So, as I said before, I was in the very
4 back. So I remember putting my left foot on
5 Javier's toilet. And then there's a little wall
6 that separates the toilet area from the bed. I put
7 my left foot on the toilet, my right foot on top of
8 that wall, and I jumped down to Javier's bed with my
9 left foot, and then I -- so I could get around
10 Javier, because now there's me, Javier, Mario, and
11 both Jerrys.

12 Q. And what's going on as you're doing this
13 maneuver?

14 A. At this time, I'm running out and both
15 Jerrys are getting in position. One is getting
16 ready to -- like, getting ready to straddle him.
17 The other one is on the side.

18 As I walk out of the room, you see me look
19 back. And at that point, I could see both of them
20 physically stabbing him.

21 Q. Okay. When you say "you see me," are you
22 referring to the video?

23 A. Yes, ma'am.

24 Q. And you looked back?

25 A. Yes, I got about, I want to say, four or

1 five steps out of the room, and I look back and
2 that's when I see both Jerrys repeatedly stabbing
3 him.

4 Q. Where is Javier at the time?

5 A. He's laying on the ground.

6 Q. And is he -- at any point in time while
7 you're looking back, do you see him get up?

8 A. No, I don't. I only look back for a split
9 second. I don't sit there and stay watching. I
10 look back real quick. I see them stabbing him. And
11 I proceed to the end of the tier and go down the
12 stairs.

13 Q. When you say "the end of the tier," are
14 you referring to -- you're on the upper walkway
15 going towards like the shower area?

16 A. Going towards 101.

17 Q. All the way --

18 A. I'm walking all the way, and I go down the
19 stairs right there by 101.

20 Q. Can you hear anything going on at this
21 point in time?

22 A. I hear commotions, noise. But I -- like I
23 say, I never looked back to confirm them. I know
24 when I was going down the stairs, Jeffrey Madrid is
25 coming up the stairs.

1 Q. And is he another person that's in the
2 pod?

3 A. Yes, ma'am. He's another SNM member
4 living with us. He's going up the stairs.

5 Q. And do you tell him anything?

6 A. And I do. I tell him, "It's none of your
7 business. Just mind your own. It's none of your
8 business. Go back down."

9 So he stops. I tell him that real quick,
10 and I continue to head down the stairs.

11 Q. Okay. And do you know whether or not he
12 continued to go upstairs, or did he turn around and
13 go your same direction?

14 A. He did neither. He just stopped and kind
15 of looked up, and he could see -- from standing on
16 the stairs, he could have a direct view into
17 Javier's room.

18 Q. So at some point do you see something
19 happen in Javier's room from downstairs?

20 A. I'm now downstairs. Downstairs is where
21 all -- there's tables in the common area and stuff.
22 So I'm standing there by the microwave and stuff,
23 and I see Javier actually come out of the room.

24 Q. And when you see him come out of the room,
25 do you notice anything about him?

1 A. He has a blood spot on his chest. You
2 could see a decent-sized bloodstain.

3 And shortly -- a few -- maybe a second or
4 so after he comes out, he's walking towards the
5 stairs, and he's saying, "All right, all right,
6 carnal, you got me. I'll leave."

7 Q. And you could hear him say that?

8 A. Yeah, I clearly remember that. It's the
9 last words I've ever heard from him.

10 Q. And where is he going?

11 A. He's walking towards the stairs. And he's
12 saying that over and over. "You got me, you got me
13 carnal. I'll leave. I'll leave."

14 And at that time I hear him saying that,
15 Mario says, "Get him. What the fuck. Hurry up, get
16 him."

17 Q. And who is he directing that to?

18 A. He's talking to the Jerrys, Montoya and
19 Armenta.

20 Q. So do you notice where they're at?

21 A. They're now trailing him. They're a few
22 steps behind him. They're walking down the stairs,
23 or Molina is walking down the stairs. And Jerry and
24 Jerry -- it's Javier Molina, Jerry Montoya, and then
25 Armenta. And then as soon as Javier hits the bottom

1 stairs, he turns around and gets in a fighting
2 stance.

3 Q. Who gets in a fighting stance?

4 A. Javier Molina at the bottom of the stairs.
5 He gets in a fighting stance. And that's when
6 little Jerry Montoya punches him.

7 Q. Now, on the video, can you actually see
8 that, or is it in an area that's blocked by the
9 camera?

10 A. You should be able to see it.

11 Q. Now -- and I'm going to show actually
12 Exhibit Number 17, if we can get it turned over.
13 Sorry.

14 Okay. We're looking at a picture that's
15 Exhibit Number 17 and there's -- on the top there's
16 some stairs and at the top it's 101. Is that the
17 same 101 room that we had on the diagram before?

18 A. Yes, ma'am.

19 Q. And so there appears to be a doorway.
20 Where were you at the point in time where we are in
21 relationship to this picture?

22 A. I'm in the common area that's to the -- if
23 you go in that doorway, you turn right. And there's
24 a common area that has tables. There is one, two,
25 three, four tables.

1 Q. And I'm going to show Exhibit Number 21.
2 Does that look like some of the tables?

3 A. Yes.

4 Q. And I'm going to show you Exhibit Number
5 23.

6 A. That's still the same pod, and that's more
7 where I was, by the microwave.

8 Q. Okay. There is a microwave against a
9 wall. Is that -- and I just circled it -- is that
10 where you were standing?

11 A. In that general area. I was kind of in
12 front of that last table right there in that general
13 area.

14 Q. Right here?

15 A. Yes, around that area.

16 Q. And I circled the last table, the bottom
17 of the floor there. Now, on this picture we also
18 see cell 108 and 107 at the top. Do we see your
19 cell?

20 A. Yes.

21 Q. What number is it, again?

22 A. 108.

23 Q. And that's the last one, I believe you
24 said. I guess you'd be wall -- you share a wall
25 with yellow pod; correct?

1 A. Yes, ma'am.

2 Q. So you're in this area. Who else is down
3 on this area with you, if you recall?

4 A. I remember Ronald Sanchez being down
5 there. That's really all I can remember being in
6 that. Daniel was down there. Daniel --

7 Q. Where was he?

8 A. Daniel was with his brother at the table.
9 Actually, you could see the table, the table that
10 has a blanket with cards on it.

11 Q. Is that the table that they were on?

12 A. Yes.

13 Q. If we could go back to Exhibit 21. Thank
14 you. All right.

15 Do you see the table now?

16 A. Yes, ma'am. I guess it would be the
17 middle table, in between those two right there in
18 the corner.

19 Q. So I'm circling it now. Does it have a
20 blanket or a cover on the table?

21 A. Yes, there's a blanket with cards, to play
22 cards with, so the cards won't slide off the table.
23 They always put down a blanket whenever they play
24 any kind of games and stuff so the cards don't slide
25 off.

1 Q. And then in this picture from that angle,
2 can you see cell 105?

3 A. Yes, ma'am.

4 Q. So you indicated that Javier got down --
5 and from what you could see, in a fighting stance?

6 A. Yes, ma'am.

7 Q. And what happened then?

8 A. And Jerry Montoya punches him, and they
9 begin to fight. They get in a little fight at the
10 bottom of the tier. And that's when Jerry Armenta
11 gets in. And at this point, Jerry Montoya don't
12 have his weapon no more. He doesn't have a shank.

13 Q. How do you know that?

14 A. Because -- well, I didn't see a shank in
15 his hand. I didn't see one anywhere. He never used
16 it. So if he had it, he had it in his waistband, or
17 whatever.

18 Q. You mean you never saw him use his shank
19 down there?

20 A. I never saw Montoya use or possess a
21 weapon downstairs.

22 So Montoya and Molina are fighting, and
23 Jerry Armenta comes in and he still has his weapon.
24 He has his shank. And he comes in and proceeds --
25 he stabs him a few more times, and now, at some

1 point he falls.

2 Q. Who is "he"?

3 A. Molina. And at this point, you'll see
4 Li'l Jerry kind of -- he walks away. You never
5 really see him again. After Javier Molina falls,
6 Jerry Montoya disappears somewhere.

7 Q. And is that what you saw?

8 A. Yes.

9 Q. And do you know where he went?

10 A. He went downstairs towards his room.

11 Q. And that's what you saw?

12 A. Yes.

13 Q. And then what did you see as far as Jerry
14 Armenta?

15 A. Jerry Armenta continued to kick him. He
16 stabbed him once, twice. A couple of times while
17 was on the ground, he kicked him. And then at some
18 point, I guess, there was a chain Javier was wearing
19 got broke off. So I seen him walk -- the chain was
20 laying in the middle of the pod.

21 Q. Was that towards where you were standing,
22 like in between where they were and where you were
23 standing on that floor there?

24 A. Yes, it was in the common area.

25 Q. And then who did you see?

1 A. I seen Armenta walk and go pick it up, and
2 then he walks back. By this time, they're in a real
3 corner, like right against that door that was
4 opened, that you see in the picture.

5 Q. And what do you do?

6 A. I don't have that clear, clear view no
7 more. Because where I'm at, I can't -- there is a
8 wall right there, so I can hear scuffling. And at
9 this point that's when the COs finally open the
10 door, and they start to come in.

11 Q. Now, I believe you talked about what you
12 heard Javier Molina say when he was going down the
13 stairs. Did you hear him ever say anything else?

14 A. I -- no, those were literally the last
15 words I heard him say.

16 Q. So the guards come in, and where do you
17 go?

18 A. I scaled the tier. As the picture
19 indicated, there's bars. So I climbed up the bars
20 and went -- jumped the top bars, and went straight
21 into my room.

22 Q. And is that visible in the camera, or was
23 that out of the camera view?

24 A. If that camera would have been working, it
25 would have been visible. But due to the fact that

1 the one camera that faces directly towards my house
2 was broken at that point in time, you don't see
3 that.

4 Q. So does everybody then go on lockdown?

5 A. Yes, everyone starts locking down. The
6 guards come in, they're controlling the situation,
7 locking everybody down.

8 Q. Okay. And by "locking everybody down,"
9 does that mean putting people back in their pods?

10 A. It's pretty --

11 Q. Not the pods, I'm sorry. Their cells?

12 A. Yes, in our case, putting everybody in
13 their assigned cell.

14 Q. Are you aware of whether or not Daniel
15 Sanchez was put in the cell next to you?

16 A. Yes.

17 Q. And how are you aware of that?

18 A. Because we had another conversation after
19 the fact.

20 Q. Okay. Tell us about that.

21 A. All right.

22 Q. Who started the conversation?

23 A. Dan, once again, knocks on the wall.

24 Q. And what do you do?

25 A. Say, "What's up, carnal?" And --

1 Q. Who said, "What's up, carnal?" You or
2 him?

3 A. I say, "What's up, carnal?"

4 And once again, we're in that vent in
5 between the toilet and the bed. And that's where he
6 says -- he congratulates me, telling me, "Good job.
7 You did a good job." He says, "You did good. You
8 did your part. From now on," he says, "you have my
9 respect. You won't see me talking shit or talking
10 down to you no more."

11 Q. Okay.

12 MR. VILLA: Your Honor, can we have a
13 limiting instruction, please?

14 THE COURT: These conversations can only
15 be considered in the charges against Mr. Sanchez,
16 not against the other three defendants.

17 BY MS. ARMIJO:

18 Q. And after he told you that you had done a
19 good job, did he instruct you or tell you anything
20 else?

21 A. He just pretty much -- like I said, "Good
22 job, good job." And he again told me, he says,
23 "This is how it's going to be from now on. We're
24 going back to the old ways."

25 Q. Did he have a conversation with you about

1 whether or not there was any evidence?

2 A. Oh, yeah. He says, "Just don't even trip,
3 carnal." He says, "Keep your mouth shut. Don't say
4 anything." He says, "Don't even trip. The cameras
5 can't see into Javier's room. They don't have
6 nothing on you."

7 Q. And how were you feeling at that point?

8 A. I -- honestly, I was in shock. Like I
9 said, I just participated in one of my best friend's
10 murder or -- at the time, I didn't know he was dead.
11 So I just knew I participated in one of my best
12 friend's assaults. And so I was in the zone. I was
13 like, "All right. All right. Fuck, yeah, carnal,"
14 you know what I mean? "You ain't got nothing to
15 worry about. I ain't going to say nothing."

16 And like I said, I'm in a stupor of being
17 high, the adrenaline rush of everything that just
18 happened. I can't even really explain how -- my
19 emotional state. It was just like a roller coaster.

20 Q. Now, do you stay in that room the whole
21 time?

22 A. We stay in there. We're locked down.
23 We're actually locked down for a little -- it seemed
24 like a long time. I can't even really put a time
25 line. I'd say maybe 30 minutes or more and the

1 State Police show up. And the State Police start
2 conducting -- they're locking the scene down,
3 getting everything. And so they start moving us one
4 by one. They take each individual out, to take
5 us -- they took us from our cell to the unit
6 manager's office. They took pictures of us. They
7 took all our clothes, took pictures for their
8 evidence. And from there, once we were done with
9 that process, they took us to a whole other unit
10 over there in 2-A. I want to say that was unit 2-A.

11 Q. Now, at some point the next day, do you
12 know whether anybody was transferred up to the
13 North?

14 A. The next day, early in the morning, I know
15 Daniel Sanchez, Archie Varela, and Mario Rodriguez
16 were transferred on emergency transport back to the
17 North.

18 Q. Did you stay down at Southern?

19 A. I did. I stayed at Southern for about
20 another six months. I was -- during the initial
21 investigation of everything, prison is on lockdown
22 due to it. The prison guards are conducting
23 investigation. And that's actually how I found out
24 Javier was dead. I still didn't know until the STIU
25 came, and they started doing interviews of

1 everybody, and they're actually the ones that told
2 me that he was dead. And so --

3 Q. When they came and pulled you out and
4 talked to you, did you give a statement?

5 A. I didn't. I just -- they asked me: "What
6 were you doing in there?"

7 I said, "I was just in there, we were
8 talking about food, we were -- just small talk and
9 stuff." I never gave a statement of what happened.

10 Q. Now, at some point did you have a
11 conversation with Daniel Sanchez about the shanks in
12 this case?

13 A. Yes, ma'am.

14 Q. And where was that conversation?

15 A. It was, once again, in the vent. It was
16 prior to the actual murder, actual assault taking
17 place, that he had told me that he had acquired the
18 metal from Rudy's walker; that they went in and got
19 it from him.

20 Q. Did he say anything about that to you?

21 A. Who? Daniel or --

22 Q. Daniel Sanchez, yes.

23 A. He just said that, "Yeah, don't even
24 trip." This is the conversation of why we have to
25 put in work, on and on, and he's like, "Don't even

1 trip. We've already got the fierros made. We went
2 and got the metal from Rudy's walker."

3 Q. Now, did you get charged initially?

4 A. Initially, statewide, as state charges,
5 no. But I did get an institutional writeup for --
6 my initial charges were murder, attempted complicity
7 to a murder, gang activity -- and what was the other
8 one -- and tampering with evidence. Those were the
9 four initial charges on my writeup. So that's
10 another reason I stayed at Southern penitentiary
11 longer. I was facing my writeup there.

12 Q. Did you fight your writeup or not?

13 A. Yes, I did. I fought it. And I ended up
14 beating the murder. I beat tampering with evidence,
15 and got found guilty of attempted complicity to a
16 murder and gang activity.

17 Q. Then where were you moved?

18 A. From there, they submitted a pack to refer
19 me to the North. Like I say, that's the maximum
20 security prison now in Santa Fe. And so I guess all
21 their legal paperwork they've got to do through
22 Central Office, and everything. And I get approved
23 to get sent to the maximum security. So they shot
24 me up to the North in Santa Fe.

25 Q. And when is this that you're shot -- if

1 you can recall, that you're sent up to Santa Fe?

2 A. I want to say September-ish.

3 Q. Of what year?

4 A. Of '14, 2014.

5 Q. And are you there until you're arrested in
6 December of 2015?

7 A. No, ma'am. I'm there in -- throughout
8 this. The State ended up picking up the case and
9 charged Jerry Montoya, Jerry Armenta, Mario
10 Rodriguez with the murder, and stuff. So I ended up
11 being put on the State's witness list. And the
12 State was trying to use me, and Jerry Montoya was
13 trying to use me. I was on a dual list. And the
14 court proceedings were getting ready to take place.
15 So I left the North in June --

16 MR. JEWKES: Your Honor, once again, I
17 object to him testifying in a narrative fashion.

18 THE COURT: Why don't you try to break it
19 up with some questions, Ms. Armijo?

20 BY MS. ARMIJO:

21 Q. Okay. You said that the State was
22 proceeding. So what happened?

23 A. So when Jerry Montoya planned on me being
24 his witness, they actually transported me from the
25 North to Cruces, to the prison in Cruces. I have an

1 interview.

2 Q. And why were you transferred to the prison
3 in Cruces?

4 A. It was Jerry's lawyers. They had me
5 transported down there, in order to -- they were --
6 like I said, Montoya was going to try to use me as a
7 witness on his behalf for the state murder.

8 Q. And when was this, if you can recall?

9 A. '15, March, April; shot in the dark,
10 April, May.

11 Q. I don't want you to shoot in the dark.

12 A. Okay, then --

13 Q. Is it before your arrest in the federal
14 case?

15 A. Yes, ma'am.

16 Q. And I'm going to show you a defense
17 exhibit, Defendants' FK. I'm going to go first to
18 the second page of that. Do you recognize this?

19 A. Yes, ma'am.

20 Q. And I'm going to look to the bottom. It's
21 signed by Timothy Martinez; is that correct?

22 A. Yes, ma'am.

23 Q. Is that you?

24 A. That is correct.

25 Q. Okay. And it says, "Declaration under

1 penalty of perjury," and then it has your signature
2 again?

3 A. Yes, ma'am.

4 Q. And it says, "Executed at New Mexico State
5 Penitentiary of Santa Fe, New Mexico, on 11/3 of
6 '14"; is that correct?

7 A. Yes, ma'am.

8 Q. Did you write this?

9 A. Yes, ma'am.

10 Q. And what were the circumstances for you to
11 write this? And if you need to read it, you can.

12 Did you just reread this?

13 A. Yes.

14 Q. Just to be fair, I'll show you the first
15 page of this. It says, "Amended Exhibit and
16 Supplemental Witness List," and it appears to be
17 that of Jerry Montoya; is that correct?

18 A. Yes.

19 Q. Tell us about this. Did you write this?

20 A. Yes, I did. At the time we were still all
21 active members.

22 Q. You were still active members?

23 A. Yes, I was an active member of the SNM,
24 and there was the plan that Jerry Armenta was going
25 to take the charge. He was supposed to take the

1 whole charge.

2 Q. Okay. When you say Jerry Armenta was
3 supposed to take the whole charge, are you referring
4 to the murder charge?

5 A. Yes, ma'am.

6 Q. So did you -- why did you write this?

7 A. So I wrote this as a way to get Li'l
8 Jerry, or Jerry Montoya's involvement, to X out his
9 involvement, saying that he really had nothing to do
10 with it.

11 Q. Okay. Is that true?

12 A. No, ma'am, it's not.

13 Q. Whose idea was it that you write this?

14 A. Me and -- I pretty much said, "Hey, don't
15 even trip. I'm going to help you, Jerry. I got
16 you." I call him Plaz. His nickname is Plaz.

17 Q. Did you write this to assist him?

18 A. Yes, ma'am.

19 Q. Is any of it -- as far as -- are there
20 things in here that are not true?

21 A. That are not true? Yes, ma'am.

22 Q. So did Jerry Montoya want to call you as a
23 witness?

24 A. Yes.

25 Q. Now, you said you were doing that because

1 you were still an active member?

2 A. Yes, ma'am.

3 Q. And how does that come into play?

4 A. The plan was for Jerry Armenta to take the
5 charge, meaning admit to it, and say he solely acted
6 on his own to kill Molina.

7 And so, being an active member, we lied to
8 manipulate the system. If I can get -- at that
9 time, like I say, I was an active member. If I can
10 help get one of my fellow carnals off, I was going
11 to help them.

12 Q. Is that what you did?

13 A. That's the reasoning behind that letter.

14 Q. Now, at some point in 2015 -- I believe,
15 just for the record, that was -- let's see, I don't
16 think you have a date on this. Oh, yeah, 11/3/14,
17 sorry. Does that appear correct, when you wrote it?

18 A. Yes.

19 Q. And then this document is filed in January
20 of 2015; correct?

21 A. Yes.

22 Q. Now, at some point in that year while you
23 were at PNM, do you know where Anthony Baca is at
24 this time?

25 A. Yes, sir.

1 Q. Not where he is. At some point -- let me
2 ask a better question. Sorry. At some point, is
3 Anthony Baca at PNM with you?

4 A. Yes, ma'am. After --

5 Q. And had he been out of state for a while,
6 if you are aware? Yes or no?

7 A. Yes, ma'am.

8 Q. And was he brought back?

9 A. Yes.

10 Q. And when he was brought back, were you at
11 the same facility that he was?

12 A. Yes, ma'am. We were both at PNM North in
13 Santa Fe.

14 Q. And approximately when was this?

15 A. October, late October. They brought him
16 back in late October.

17 Q. Okay. Of what year?

18 A. Of 2015.

19 Q. Did you have a conversation with him?

20 A. I did.

21 Q. Did you have more than one conversation
22 with him?

23 A. No. Actually, I had this one
24 conversation. We were out at the yard and --

25 THE COURT: Why don't you really break

1 this down, Q and A, so we can make sure the
2 defendants know what's coming in?

3 MS. ARMIJO: All right.

4 BY MS. ARMIJO:

5 Q. You were in the yard with him; is that
6 correct?

7 A. Yes, ma'am.

8 Q. And you had a conversation with him?

9 A. Yes, ma'am.

10 Q. Okay. And in the conversation, did you
11 talk about the Molina murder?

12 A. Yes, ma'am.

13 Q. And did Anthony Baca tell you anything in
14 reference to the Molina murder?

15 A. Yes, ma'am.

16 MR. JEWKES: Your Honor, we'd ask for a
17 limiting instruction.

18 THE COURT: Well, come up here. Let's
19 figure out how we're going to get through this.

20 (The following proceedings were held at
21 the bench.)

22 THE COURT: So when I look at the James
23 letter, and I look at what he's about to say, if he
24 says it just like it's in the James letter, this is
25 kind of a mixed bag. Seems to me none of it is

1 co-conspirator statement, none of it is coming in
2 for the truth as to everyone. But the sentence, "I
3 sent them a letter. They didn't want to take me
4 seriously when I said I would stop killing. Thought
5 I was joking. Now they have a body on their hands."

6 That's a statement against Baca. It's a
7 statement about his motives for ordering the Molina
8 murder. I don't think it would be state of mind.
9 So it's not going to come in to anybody else. So I
10 think he'd be entitled to a limiting instruction on
11 that.

12 The rest of that statement, where he
13 begins to talk about Marcantel and those sort of
14 things -- let me go back also to those two
15 statements that -- those two sentences that are at
16 the beginning of your James letter. That's going to
17 be a predeclaration state of mind. It's not going
18 to be his existing state of mind. The rest of it,
19 though -- when I look at that James letter, the rest
20 of it looks like it's explaining his state of mind,
21 because it talks about at least circumstantial
22 evidence state of mind, is going to talk about what
23 we're going to do, how we're going to -- we're doing
24 it and things like that. And I guess they have
25 their 803(3). So they come in without a limiting

1 instruction.

2 Then I think that the statements as to
3 Marcantel and Santistevan are relevant as to
4 enterprise evidence. What I would propose, if this
5 is all right with the defendants, so that you get
6 the limiting instruction, when you get the limiting
7 instruction is that on the first two sentences, Ms.
8 Armijo lead the witness, and get those two
9 statements out. Then I give the limiting
10 instruction as to those, and then the rest, let him
11 testify, and I do not give a limiting instruction.
12 Would that work for everybody?

13 MS. JACKS: When the Court is talking
14 about the last of the statements being
15 co-conspirator statements --

16 THE COURT: None of these are
17 co-conspirator.

18 MS. JACKS: I thought you said state of
19 mind.

20 THE COURT: They are state of mind.

21 MS. JACKS: The state of mind goes to the
22 state of mind regarding Marcantel and Santistevan.
23 He's the only defendant charged in that. The rest
24 of us are not.

25 THE COURT: It also, though, goes to

1 enterprise evidence.

2 MS. JACKS: Well, but it's --

3 THE COURT: It's not 803(3), so it's not
4 hearsay.

5 MS. JACKS: We've made our objections.

6 THE COURT: Okay. I understand. Would
7 that be agreeable, though, that she just lead
8 through the first two sentences, and then I'll give
9 a limiting instruction, and then we'll -- if you'll
10 go ahead and testify, and I won't give the limiting
11 instruction as to Red, Ms. Bhalla?

12 MS. BHALLA: Just that I join in the
13 objection, Your Honor, with regard to the Marcantel.
14 And Your Honor, just so we're clear, I had
15 co-counsel get me the letter, because I have it from
16 my --

17 THE COURT: What I have, the first two
18 sentences, I'm not quite sure what he's saying here,
19 "I sent them a letter. They didn't want to take me
20 seriously when I said I would stop the killings,
21 thought I was joking. Now they have a body on their
22 hands."

23 That is entitled to a limiting
24 instruction. It's not clear to me what's being
25 said, but that doesn't go against anybody else.

1 MS. DUNCAN: Your Honor, just since we're
2 already up here, I'll make an objection against all
3 these statements coming in against Mr. Baca.

4 THE COURT: All right. I'll deny that
5 objection.

6 Do you have it?

7 MS. ARMIJO: Yes, Your Honor. And I have
8 one more thing that I'm going to ask about that's
9 not covered.

10 THE COURT: Yes.

11 MS. ARMIJO: Mr. Baca told him when he was
12 up there that -- "to stay strong, don't rat, don't
13 worry about Kreaper. I have someone on that to
14 visit his family."

15 THE COURT: Yeah, I think that I include
16 as all state of mind.

17 MS. ARMIJO: Okay.

18 THE COURT: You can get that in, and I
19 won't enter any sort of limiting instruction on
20 that. Just let him testify about that, rather than
21 leading him on that.

22 MS. ARMIJO: Okay. Thank you.

23 THE COURT: Lead him on the first two so I
24 can get the limiting instruction out.

25 MS. ARMIJO: Okay.

1 (The following proceedings were held in
2 open court.)

3 THE COURT: All right, Ms. Armijo.

4 BY MS. ARMIJO:

5 Q. All right. I believe we were talking
6 about a conversation that you had with Anthony Baca.

7 A. Yes, ma'am.

8 Q. Now, at the time that you had the
9 conversation with Mr. Baca, what was your
10 understanding as to his position in the gang? And
11 we're now talking about October of 2015; is that
12 correct?

13 A. Yes, ma'am.

14 Q. What was his position at that time?

15 A. He was still the leader over all of the
16 SNM. He was the main guy in the SNM.

17 Q. And did Anthony Baca tell you that he
18 "sent them a letter, they didn't want to take me
19 seriously when I said I would stop the killings.
20 They thought I was joking. Now they have a body on
21 their hands"?

22 A. Yes, ma'am.

23 THE COURT: All right. You can only use
24 this statement as to Mr. Baca in your consideration
25 of the charges against him. You can't use it

1 against any of the other three defendants.

2 All right. Ms. Armijo.

3 Q. Now, did he also indicate to you anything
4 about making the SNM's presence felt?

5 A. Yes, ma'am.

6 Q. And what did he tell you in reference to
7 that?

8 A. We were talking -- he was, like, "We need
9 to make our presence felt again. We need to
10 reestablish our power, show them that we run the
11 system."

12 Pretty much that they wanted to hit all
13 the top officials. He didn't want to hit no more
14 regular COs, no more lower-level people. He wanted
15 top officials. And that's when he told me that he
16 had -- that there was something in the works for
17 Mr. Gregg Marcantel and Dwayne Santistevan.

18 Q. Did you know who Dwayne Santistevan and
19 Gregg Marcantel were?

20 A. Yes. Mr. Santistevan, to my
21 understanding, was the STIU -- big STIU guy. And
22 Marcantel was the Secretary of Corrections.

23 Q. All right. So he tells you specifically
24 about that. What else did he say?

25 A. And that he'd also like to hit some of the

1 wardens, too, would be nice, to be able to hit any
2 top level in the Corrections, wardens on up; that he
3 really didn't want to mess with no more regular COs,
4 because we've done that in the past. He wanted to
5 make a name for us again. He wanted our presence to
6 be felt. And that's when he was, like, "What's the
7 worst that's going to happen? We hit one of these,
8 it's going to get us our recognition. What's the
9 worst that can happen? Ship us out of state for a
10 little while. Eventually, let us all back in the
11 state."

12 Q. And is that what he told you?

13 A. Yes, ma'am.

14 Q. Now, did he also tell you anything
15 about -- when he was talking to you -- this -- about
16 whether or not it started with Javier?

17 A. Yes, ma'am.

18 Q. What did he say?

19 A. He said Molina was just pretty much a
20 building block, and he says, for bigger and better
21 things. That's Number 1, to show that we mean
22 business. They didn't want to let me out. We mean
23 business. Here's what it is. We're going to start
24 moving on up. But from now on, we're going to start
25 hitting the high-ups of the prison system.

1 Q. Now, did he also say anything about -- did
2 you discuss with him the fact that you were going to
3 be possibly involved in one way or another about --
4 in the state Molina charges?

5 A. No. At this point in time, we had known
6 that Mr. Armenta was cooperating with the State. He
7 had made many statements.

8 Q. Okay. What did he tell you about Armenta?

9 A. We knew Armenta was cooperating. So he
10 told me, he says, "Don't even trip about Kreaper" --
11 which is Jerry Armenta -- "Don't trip about him. We
12 got him. I got somebody going to his house to pay
13 his family a visit."

14 Q. What did you take that to mean?

15 A. That means to pretty much make sure they
16 told their son, or whoever they went to, to keep
17 their mouth shut. That's when he says, "Just stay
18 strong, don't rat, keep your head up, and be proud."

19 Q. Now, after that, did you subsequently, in
20 December, get arrested in that case?

21 A. Yes, ma'am. After that conversation took
22 place, maybe a couple days later, they actually
23 transferred me to Las Cruces on behalf of Li'l Jerry
24 Montoya, because his state trial was getting ready
25 to start. And about, I guess, a week -- the week

1 that his trial was going to start, the State drops
2 it. And that's when we found out that the feds
3 stepped in, and we all got charged on this case now.

4 Q. Now, did you have a conversation with Rudy
5 Perez at some point after he was arrested in this
6 case?

7 A. Yes, ma'am.

8 Q. And where was that conversation at?

9 A. This was in Estancia, Torrance County
10 Detention Facility.

11 Q. And you indicated previously that you were
12 friends with Mr. Perez?

13 A. Yes, ma'am.

14 Q. And did he indicate to you anything about
15 the fact that his -- well, parts of his walker had
16 been used?

17 MR. VILLA: Objection, leading.

18 THE COURT: Overruled.

19 A. Yes, ma'am.

20 BY MS. ARMIJO:

21 Q. What did he say in reference to that?

22 A. He said that everyone has a part to play,
23 and that was my part for the familia, to put in
24 work. Because he couldn't do it himself due to his
25 physical status at the time. So his part was to let

1 him use his walker, the pieces from his walker.

2 Q. You said he indicated that everyone has a
3 part to play?

4 A. Yeah. Everyone has a part to play. My
5 part was: I gave them the walker. That was my
6 part. And then he goes on to say, "Everyone has a
7 part to play, down to the very last person; that
8 their part could just be to keep their mouth shut."

9 MS. DUNCAN: Your Honor, could we have a
10 limiting instruction?

11 THE COURT: You can only use that
12 statement -- the testimony that was just given about
13 what Mr. Perez said -- only in your consideration of
14 the charges against Mr. Perez. You cannot use it in
15 your discussion of the charges against the other
16 three defendants.

17 Ms. Armijo.

18 BY MS. ARMIJO:

19 Q. And when he said "la familia," what did
20 you take that to mean?

21 A. The SNM, that's where we consider each
22 other -- we call each other carnals, which means
23 brother in Spanish. It's a family. That's -- so
24 when he said everyone has a part, and that was my
25 part, to contribute to la familia, he meant to the

1 family, to the SNM.

2 Q. Now, and did you -- was that before you
3 decided to cooperate?

4 A. Yes, ma'am.

5 Q. When did you decide to cooperate in this
6 case, if you recall?

7 A. At the end of 2016.

8 Q. And did you have a meeting with the FBI
9 and prosecution team about potential cooperation?

10 A. Prior to me, or --

11 Q. Prior to pleading guilty.

12 A. Yes, ma'am.

13 Q. And then did you, in fact, plead guilty on
14 January 26 of 2017?

15 A. Yes, ma'am.

16 MS. ARMIJO: I'm going to move for the
17 admission of Exhibits 676 and 677, which is the plea
18 agreement and addendum.

19 THE COURT: Any objection from the
20 defendants?

21 MS. DUNCAN: No, Your Honor.

22 MR. VILLA: No, Your Honor.

23 MS. BHALLA: No, Your Honor.

24 THE COURT: Not hearing any objections,
25 Government's Exhibits 676 and 677 will be admitted

1 into evidence.

2 (Government Exhibits 676 and 677
3 admitted.)

4 BY MS. ARMIJO:

5 Q. If we could please have 676. Oh, it's up.
6 All right.

7 Are you familiar with this document?

8 A. Yes, ma'am.

9 Q. And what is it?

10 A. It's a copy of my plea agreement.

11 Q. Now, in going through that, I'm going to
12 go to the second page. All right. And I'm looking
13 at -- you pled to two counts; is that right?

14 A. Yes.

15 Q. Okay. You pled to a conspiracy to murder
16 and an actual murder charge; is that correct?

17 A. Yes, ma'am.

18 Q. And for the murder charge, did you plead
19 to a mandatory imprisonment of life?

20 A. Yes.

21 Q. And I'm referring to 5A. Is that what's
22 reflected there?

23 A. Yes, ma'am.

24 Q. Then going to page 3, please. All right.

25 And do you see there that on 7A it says,

1 "The United States has made and will make no
2 agreement pursuant to the rules that a specific
3 sentence is the appropriate disposition of this
4 case." Do you see that?

5 A. Yes, ma'am.

6 Q. And then did you also -- and I'm going to
7 ask that you display 677.

8 Are you familiar with this item? It's an
9 addendum to your plea agreement.

10 A. Yes, ma'am.

11 Q. Okay. And I'm going to go -- and it has
12 on the back page, I believe, which is the next page,
13 your signature on it; is that correct?

14 A. Yes, ma'am.

15 Q. It says, "Timothy Martinez a/k/a Red"; is
16 that correct?

17 A. Yes, ma'am, that's me.

18 Q. Okay. And what is your understanding of
19 this addendum? And I'll go back to the first page
20 now.

21 A. What's my understanding of it?

22 Q. Yes.

23 A. That I've agreed to not only take a plea,
24 but to be a cooperating witness within this trial.

25 Q. And what is the one thing that you have to

1 do?

2 A. To testify truthfully, to give true
3 statements, true facts, and to help out in any way,
4 whether it be in any future proceeding, this
5 proceeding, or any future proceeding, whether it be
6 federal or state level.

7 Q. Now, when you made the decision to
8 cooperate, were you moved from, as you say, your
9 house? Was your housing situation moved from one
10 situation to be with others once you decided to
11 cooperate?

12 A. Yes, ma'am.

13 Q. And were you then housed with other
14 persons who were cooperating?

15 A. Yes, ma'am.

16 Q. Did you have a tablet with you while you
17 were pending these charges?

18 A. Yes, ma'am.

19 Q. And what was the purpose of the tablet?

20 A. To review all the discovery that pertained
21 to this case.

22 Q. And is that something that every defendant
23 that is being prosecuted by the federal government
24 has?

25 A. Yes, it's our legal right to have.

1 Q. In this case, I should say?

2 A. Yes, it's our legal right to have a copy,
3 and there's too much paperwork, so that's why we
4 were issued tablets.

5 Q. And at some point in time did you tamper
6 with your tablet?

7 A. Yes, ma'am.

8 Q. And by tampering with it, what were you
9 allowed to do?

10 A. Before I tampered with it, I was allowed
11 to review the discovery. Afterwards, I reset it. I
12 found a way to reset the whole computer, the whole
13 tablet to its factory settings, which allowed me to
14 get Wi-Fi and Bluetooth and reset, pretty much,
15 where I got all the Windows programs.

16 Q. And with that, you said you had internet
17 access?

18 A. Yes, ma'am. We were -- right where I was,
19 was in Sandoval County Federal Detention, so it's
20 located right next to a Walmart at -- like, the
21 Walmart is not even 100 yards away from the jail.
22 So we were able to pick up free Walmart wifi.

23 Q. Was that something you were supposed to
24 do?

25 A. Absolutely not.

1 Q. What sort of things did you look at on the
2 tablet?

3 A. I watched movies. I downloaded movies,
4 music, created a Facebook page, and actually I was
5 taking college classes and -- as a self-study. So I
6 didn't have no teachers, and especially not in
7 Sandoval County. There is no one there to help me,
8 so I used it to help me on some of my math
9 assignments. Google is good for everything. It
10 helped me in math.

11 Q. All right. Did you do anything as far as,
12 like, Facebook?

13 A. Yes, ma'am.

14 Q. What about porn?

15 A. Yes, ma'am.

16 Q. And at some point in time, was the tablet
17 taken away?

18 A. Yes, ma'am.

19 Q. And since then, have you had your tablet?

20 A. No, ma'am.

21 Q. Now, did you also -- you indicated that
22 you were a successful drug dealer while you were
23 incarcerated?

24 A. Yes, ma'am.

25 Q. Did you continue, once you were arrested

1 federally, with your drug-dealing activities?

2 A. Yes, ma'am.

3 Q. And where did you continue those
4 activities?

5 A. I -- once I was in Estancia, I was selling
6 while I was in Estancia, which is TCDF Torrance
7 County, and also in Sandoval.

8 Q. And when you were in Estancia, you said
9 you did so in Estancia; is that correct?

10 A. Yes, ma'am.

11 Q. And where else?

12 A. In Sandoval County.

13 Q. And how long has it been since you have
14 stopped that activity?

15 A. Going on five months now.

16 Q. Was that something that you were allowed
17 to do?

18 A. No, ma'am.

19 Q. Now, you decided -- did you -- why did you
20 decide to cooperate?

21 A. I wanted to just -- first of all, like I
22 said, Javie was my friend. You know what I mean?
23 And it really did weigh on me. I had that on my
24 conscience a lot. And I started to turn a leaf
25 again and I got back close with the Lord and

1 everything, walking with the Lord, so I had -- I
2 knew in order to ever ask for forgiveness, I had to
3 do the right thing and I had to take responsibility.
4 So when I agreed to cooperate, that was one of the
5 main, main things, was to try to right a wrong that
6 I committed. It's never going to bring back
7 Mrs. Molina's son, but in my way I'm trying to right
8 it the best I can.

9 Q. And from the time you committed or
10 assisted in the Molina murder, how long did you have
11 left to serve on your sentence?

12 A. I was -- at that time, which was March, I
13 had 13 months.

14 Q. Thirteen months left?

15 A. Yes, ma'am.

16 Q. So have you finished your state sentence?

17 A. I'm actually -- the sentence -- yes, I'm
18 on in-house parole right now. And I will discharge
19 my state number, completely discharge parole,
20 everything, April 23 of this year.

21 Q. Okay. When you say you're in-house
22 parole, that means you're serving your parole right
23 now since you're incarcerated?

24 A. Yes, ma'am.

25 Q. You said for one thing you wanted to right

1 it. Were there other reasons that you decided to
2 cooperate?

3 A. I just wanted a new life. I wanted,
4 pretty much, to stand on my own two feet. I was
5 tired of being used. Because I felt I got used in
6 that murder. I felt that at the end of the day,
7 they didn't care one way or another about me as an
8 individual, and that's -- for a family, that's not
9 something do you in a family. You care about your
10 brothers. You care. So I got tired of being used.
11 I just wanted to stand on my own two feet. I wanted
12 a new start, and I knew by cooperating, there would
13 never be a chance for me to be able to go and say,
14 "I want back in," because if I ever went that
15 direction, it would end up in the same thing as
16 Mr. Molina. So this gave me my key out, and pretty
17 much shutting that door forever.

18 THE COURT: Would this be a good time to
19 take our lunch break?

20 MS. ARMIJO: Yes, Your Honor. Thank you.

21 THE COURT: All right. We'll be in recess
22 for about an hour. All rise.

23 (The jury left the courtroom.)

24 THE COURT: All right. See you back in an
25 hour.

1 (The Court stood in recess.)

2 THE COURT: All right. We'll go on the
3 record. Anybody need to discuss anything before we
4 bring the jury in? Anything I can do for you, Mr.
5 Beck?

6 MR. BECK: No, Your Honor.

7 THE COURT: How about from the defendants?
8 Anybody got anything?

9 (The jury entered the courtroom.)

10 THE COURT: All right. Everyone be
11 seated.

12 All right. Mr. Martinez, I'll remind you
13 that you're still under oath.

14 THE WITNESS: Yes, sir.

15 THE COURT: And Ms. Armijo, if you wish to
16 continue your cross-examination, you may do so.

17 MS. ARMIJO: Your Honor, I pass the
18 witness.

19 THE COURT: Thank you, Ms. Armijo.

20 All right. Cross-examination of Mr.
21 Martinez? Ms. Duncan?

22 MS. DUNCAN: I am, Your Honor. If I may
23 just have a moment to get organized, Your Honor.

24 THE COURT: Certainly.

25

1 CROSS-EXAMINATION

2 BY MS. DUNCAN:

3 Q. Good afternoon, Mr. Martinez.

4 A. Good afternoon, ma'am.

5 Q. I'd like to start where Ms. Armijo stopped
6 off, which is the reasons why you cooperated. And I
7 think that you testified that you cooperated because
8 you got close to the Lord; correct? And that was in
9 January 2017?

10 A. Well, I've been close before, I walked
11 with the Lord, strayed. And in fact, I was trying
12 to find my way back.

13 Q. And since you got close to the Lord, you
14 took over the drug trade in Sandoval County
15 Detention Center?

16 A. I wouldn't say take it over, but I
17 participated in it.

18 Q. You and Frederico Munoz realized there
19 were drugs being brought into Sandoval County, and
20 decided to take that on?

21 A. Yes.

22 Q. And since you got close to the Lord, you
23 tampered with your tablet to access pornography;
24 correct?

25 A. That and other things. Like I said, I

1 needed help in my education, which I did graduate
2 with my associate of arts, and that was my way of
3 getting help.

4 Q. So you think graduating with your
5 associates in arts outweighs breaking your tablet to
6 view pornography?

7 A. No, ma'am. I know it wasn't right.

8 Q. Since you got close to the Lord, you also
9 developed a romantic relationship with a
10 correctional officer at Sandoval County Correctional
11 Facility; correct?

12 A. Correct.

13 Q. Mr. Martinez, are you married?

14 A. At the time? Yes, I am currently married.
15 But at the time, we were going through a divorce.

16 Q. And I'm guessing that the correctional
17 officer was not your wife?

18 A. No, ma'am.

19 Q. I'd like to talk to you about the
20 statements that you've given to law enforcement over
21 time.

22 A. Correct.

23 Q. And I'd like to start first with the
24 statement that you gave on March 8 of 2014. That
25 was the day after the Molina homicide; correct?

1 A. Correct.

2 Q. It was the next morning?

3 A. Yes.

4 Q. You were interviewed by Agent Alvarado and
5 Agent Palomares; correct?

6 A. Yes, ma'am.

7 Q. And that interview was recorded, wasn't
8 it?

9 A. As far as I know, yes.

10 Q. In fact, the interview is on the tablet
11 that we've talked about holding all the discovery in
12 this case; correct?

13 A. No, ma'am. The one that's on the tablet
14 took place after the fact.

15 Q. That was the March 10th, 2014, interview?

16 A. Yes, ma'am.

17 Q. And during that interview, you claimed to
18 know nothing about the murder; correct?

19 A. Which interview?

20 Q. I'm sorry, the March 8, 2014, interview.

21 A. Yes, ma'am.

22 Q. You claim that you went into Mr. Molina's
23 cell to discuss putting on a spread?

24 A. Yes, ma'am.

25 Q. And you told the officers that you were

1 not involved in the actual killing; correct?

2 A. Yes, ma'am.

3 Q. And that you just wanted to go home?

4 A. Yes, ma'am.

5 Q. And you knew at the time that if you were
6 convicted of the Molina murder, you were not going
7 to go home; correct?

8 A. Well, yes, ma'am.

9 Q. So you mentioned that you had
10 interviewed -- well, also on March 8 of 2014 is when
11 you talked to the STIU officers; correct?

12 A. Yes, ma'am.

13 Q. And you told them -- you started off
14 telling them about this spread that you were going
15 to put on; correct?

16 A. Yes. I was in there talking about food.

17 Q. And then later you told the STIU
18 officer -- or you asked the STIU officer: "Do you
19 want me to be straight honest"; correct?

20 A. Not during that interview.

21 MS. DUNCAN: Your Honor, if I could -- I'm
22 looking at Bates No. 41134.

23 Q. I'm showing you this report.

24 A. All right.

25 Q. And on March 8 of 2014, you were

1 interviewed by Ernie Holguin; correct?

2 A. Yes.

3 Q. And if you look here --

4 A. All right.

5 Q. Do you recall asking Mr. Holguin: "Do you
6 want me to be straight honest?"

7 A. Yes, ma'am.

8 Q. And then afterward, you told Mr. Holguin
9 that you went into Javier Molina's cell to get high
10 with Mr. Molina?

11 A. Yes, ma'am. I did not recall saying,
12 "I'll be honest with you." I do remember that
13 conversation.

14 Q. And is that true, that you went into
15 Mr. Molina's cell to get high?

16 A. Yes, ma'am. That was the plan. We were
17 going to lure him in with drugs.

18 Q. And then you told Mr. Holguin that while
19 you were in the cell, you seen them two coming in
20 and you ran out?

21 A. Yes, ma'am.

22 Q. When Mr. Holguin asked you why, you said
23 that you panicked, and you thought they were coming
24 for you. And you said no; correct?

25 I'm sorry, that was a bad question. I'll

1 start over.

2 Mr. Holguin asked you why, and you said
3 that you panicked and ran out; correct?

4 A. Yep.

5 Q. Also in this report or when you were
6 talking to Mr. Holguin, you made statements against
7 various people and about their role in the SNM;
8 correct?

9 A. I don't recall.

10 MS. DUNCAN: If I could approach, Your
11 Honor.

12 THE COURT: You may.

13 BY MS. DUNCAN:

14 Q. I'm showing you Bates 41135.

15 A. Right here.

16 Q. The last paragraph. I don't want you to
17 tell me what you said, but am I correct that you
18 made a statement to Officer Holguin about your
19 opinion of the different people's roles in the SNM?

20 A. Yes, ma'am. Those were the ones that were
21 currently at the facility at the time.

22 Q. So at that time when you gave those names,
23 you were cooperating with Mr. Holguin; correct?

24 A. In a way, yes.

25 Q. The next statement you gave was on March

1 10 of 2014; correct?

2 A. Yes.

3 Q. And that was to Sergeant Larcher and FBI
4 Agent Roundy?

5 A. Yes.

6 Q. That was two days or three days after the
7 murder of Javier Molina?

8 A. Yes, ma'am.

9 Q. That interview was recorded; correct?

10 A. Yes, ma'am.

11 Q. And I think you testified earlier that
12 that recording is on the tablet?

13 A. Yes, ma'am.

14 Q. And that's the tablet that was provided to
15 all the defendants in this case?

16 A. Yes, ma'am.

17 Q. And it was disclosed in August of 2016;
18 correct?

19 A. The tablet or -- what do you mean?

20 Q. Your statement --

21 A. Yes, ma'am.

22 Q. -- was among the earliest of the
23 discovery; correct?

24 A. Yes.

25 Q. Do you recall that the first discovery had

1 to do with the murder of Javier Molina?

2 A. Yes, ma'am.

3 Q. And it included statements people had made
4 at the time of the murder?

5 A. Yes.

6 Q. Including yours?

7 A. I think -- I could be wrong, but I thought
8 mine came on -- we got them, then we sent them back
9 to be updated. That's when I thought they had my
10 recordings on there. I think it was in the second
11 set.

12 Q. That was in 2016?

13 A. Yes, I'm hoping.

14 Q. And those -- the recordings were also
15 disclosed in discovery in the state cases; correct?

16 A. I don't know. I was never charged by the
17 state.

18 Q. Did you ever have a conversation with Mr.
19 Montoya or Mr. Armenta about statements you had made
20 to law enforcement in the state case?

21 A. No, ma'am.

22 Q. Did you think -- one moment.

23 MS. DUNCAN: I just had this, Your Honor.

24 Q. I'm showing you what's been admitted as
25 Defendant's Exhibit FK.

1 MS. DUNCAN: Your Honor, may I approach?

2 THE COURT: You may.

3 BY MS. DUNCAN:

4 Q. We went over this a little bit on your
5 direct examination. Do you remember this?

6 A. Yes, ma'am.

7 Q. And this is a revised statement that you
8 gave for Jerry Montoya's lawyer; correct?

9 A. Yes, ma'am.

10 Q. And in that revised statement, you said --
11 and we're going to go over this in more detail
12 later -- but for now, you said, "I, Timothy
13 Martinez, am writing this revised statement on my
14 own free will due to the fact that the statement I
15 gave on March 10th, 2014, was false"?

16 A. Yes, ma'am. I took that upon writing that
17 myself. They did not know what I was going to say
18 within that. Like I said, I had no prior knowledge
19 what was on the State's discovery. So I didn't know
20 if my statement was on there or not. But in order
21 to remake a statement, I had to clarify why I lied
22 on the first one.

23 Q. And you were later interviewed by Mr.
24 Montano's lawyers and the DA?

25 A. Yes, ma'am.

1 Q. And they talked to you about the statement
2 you had made on March 10th, 2014?

3 A. Yes, ma'am.

4 Q. And that was in the State case; correct?

5 A. Yes.

6 Q. So the statement that you made in March
7 10th of 2014 -- you made that statement about -- so
8 it was a few days after the murder. And by that
9 time, you knew that the killing of Javier Molina had
10 been caught on video; correct?

11 A. Well, I knew -- yeah, I knew that -- they
12 told me that, when I was in with Mr. Holguin and the
13 STIU interview, that they had it on camera.

14 Q. And in your March 10th, 2014, statement,
15 you told them the story about how you went in to do
16 drugs with Mr. Molina; correct?

17 A. Yes, ma'am.

18 Q. And you were surprised when two men came
19 rushing in?

20 A. Yes, ma'am.

21 Q. You said that you were getting high when
22 you heard footsteps; correct?

23 A. Yes.

24 Q. And you didn't know if they were coming
25 for you?

1 A. Yes, ma'am. We're in prison. You
2 never -- when you hear loud noises or commotion, you
3 never know what's going on. Anything can change in
4 a split second in prison.

5 Q. But you knew why Mr. Armenta and Mr.
6 Montoya were coming into that cell; correct?

7 A. I did.

8 Q. So when you said that you didn't know if
9 they were coming for you, you knew they weren't
10 coming for you?

11 A. I was covering for myself.

12 Q. So you admitted to the agents that you saw
13 them running in; correct?

14 A. Yes, ma'am.

15 Q. But you didn't want to tell them who it
16 was who ran into the cell?

17 A. No, I did not, ma'am.

18 Q. But you did tell the agents that when
19 inside the cell, you saw a point?

20 A. Yes.

21 Q. And what is a point?

22 A. It's a weapon, a homemade shank, homemade
23 weapon, homemade knife.

24 Q. And eventually you told the agents on
25 March 10th, 2014, that you recognized the men who

1 came into Javier Molina's cell?

2 A. No, I did not.

3 Q. Agent Roundy asked you, "You didn't
4 recognize who they were?"

5 And you responded, "At first, no";
6 correct?

7 A. Yes.

8 Q. And then Agent Roundy asked you, "Who came
9 out of the cell?"

10 And you responded, "I saw them when they
11 came out. I can't -- my life would be next if" --
12 correct?

13 A. At that time, yes.

14 Q. So you saw the men who came out?

15 A. Yes.

16 Q. So you eventually told law enforcement
17 that you recognized the men who had rushed into
18 Javier Molina's cell, though you did not tell them
19 the names of those men; correct?

20 A. Yes, ma'am, knowing for the fact, if I
21 did, my name would be put in the hat, meaning I'd
22 have a hit on me.

23 Q. Have you ever heard of the term "dry
24 snitching"?

25 A. Yes, ma'am.

1 Q. What is dry snitching?

2 A. Telling without telling.

3 Q. And you knew at the time that the camera
4 had captured Jerry Armenta and Jerry Montoya rushing
5 into Javier Molina's cell; correct?

6 A. Yes, ma'am.

7 Q. And you told law enforcement that the two
8 men who rushed into Javier Molina's cell had a
9 point; correct?

10 A. At that time, I told them.

11 Q. I'm not asking -- is that correct, that
12 you told them you had a point?

13 A. Yes.

14 Q. Thank you. And they asked you to tell
15 them the names of the men that ran in, you refused
16 to do so, and just said, "The cameras tell it all";
17 correct?

18 A. Yes, ma'am.

19 Q. But you provided some details about Mr.
20 Armenta and Mr. Molina -- Mr. Armenta and Mr.
21 Montoya; correct?

22 A. Yes.

23 Q. For example, you told law enforcement that
24 one of them was a big fan of Tupac?

25 A. Yes, ma'am.

1 Q. And that would identify Mr. Armenta;
2 correct?

3 A. No.

4 Q. Is it Mr. Montoya who is the big fan of
5 Tupac?

6 A. Yes, ma'am.

7 Q. You also told law enforcement that you
8 heard the two men call Javier Molina a rat?

9 A. Yes, ma'am.

10 Q. And by "them," you meant Jerry Armenta and
11 Jerry Montoya?

12 A. Yes, ma'am.

13 Q. As you continued talking in your
14 interview, you eventually asked the agents what you
15 could do to help with their investigation; correct?

16 A. Yes, ma'am.

17 Q. You affirmed and told the agents that the
18 cameras captured what had happened in the attack on
19 Javier Molina?

20 A. Yes, ma'am.

21 Q. You asked the agents whether they could
22 protect you and your family?

23 A. Yes, ma'am. And they said --

24 Q. I didn't ask what they said. I just
25 asked, did you tell them that?

1 A. Yeah.

2 Q. And you told them that you wanted to talk
3 to your wife before making the decision to
4 cooperate; correct?

5 A. Not necessarily. Well, I told them I need
6 to talk to my wife. I have a lot of things, but I
7 wasn't necessarily saying I was going to cooperate;
8 that it wasn't a decision I could make on my own,
9 because I did have a wife and kids.

10 Q. So you said you wanted to talk to your
11 wife before you did anything.

12 A. Yes.

13 Q. So you would agree that the statement you
14 gave on March 10th, 2014, constituted dry snitching?

15 A. Yes, ma'am.

16 Q. The next statement that you gave was on
17 September 4 of 2014; correct?

18 A. Of which year, ma'am?

19 Q. September 2014. Let me ask you this: Did
20 you write a statement for Defendant Jerry Montoya?

21 A. Yes, ma'am.

22 Q. I think you said that you wrote that of
23 your own volition?

24 A. Yes.

25 Q. And you wrote actually a number of

1 statements for him; correct?

2 A. That was the one that I wrote. I don't
3 recall. Which other ones did I write?

4 Q. You wrote three in toto; correct?

5 A. No, I wrote them -- one in -- for his
6 writeup. But I really don't recall which other ones
7 you're talking about.

8 MS. DUNCAN: Your Honor, I'm going to
9 approach with what's been marked as Defendants'
10 Exhibit FO.

11 Your Honor, may I approach?

12 THE COURT: You may.

13 BY MS. DUNCAN:

14 Q. I'm showing you what's been marked as
15 Defendants' FO. Could you look that over?

16 A. All right. There you go, ma'am.

17 Q. Do you recognize that, Mr. Martinez?

18 A. Yes, ma'am.

19 Q. Is that a statement that you wrote?

20 A. It wasn't one that was used. It was a
21 rough draft of the one that's been submitted before.

22 Q. I'm sorry. My question was: Is this a
23 statement that you wrote?

24 A. Yes.

25 Q. And it's a statement dated September 4 of

1 2014?

2 A. I didn't see the date, but yes, if that's
3 the date on there, then that's when it's wrote.

4 MS. DUNCAN: Your Honor, at this time I'd
5 move the admission of Defendants' Exhibit FO.

6 THE COURT: Any objection, Ms. Armijo?

7 MS. ARMIJO: Your Honor, we don't have a
8 copy of it. It hasn't been provided. So after I
9 have a copy to see it -- no objection.

10 THE COURT: Anybody else have any
11 objection from the defendants?

12 Not hearing any objection, Defendants'
13 Exhibit FO will be admitted into evidence.

14 (Defendants' Exhibit FO admitted.)

15 BY MS. DUNCAN:

16 Q. Mr. Martinez, tell us how you wrote this
17 document. How did --

18 A. How did it come about?

19 Q. Yes, please.

20 A. Well, there was a plan that Jerry Armenta
21 was going to take the blame for the murder. So both
22 me and Mr. Armenta wrote Mr. Montoya a statement to
23 get him off. Because, like I say, at the time, I
24 wasn't charged; I was just helping Jerry Montoya get
25 off.

1 Q. And did you and Mr. Armenta talk about
2 your statements before you wrote them?

3 A. No.

4 Q. Did you talk to Mr. Montoya about your
5 statement before you wrote It?

6 A. I told him I was going to write him one.
7 And that's when I wrote that, shot it to him. He's,
8 like, tried to tweak it a little, put this, this.
9 And it eventually came out to be the very first one
10 that Ms. Armijo entered.

11 Q. As you say, you wrote the statement and
12 gave it to Mr. Montoya, and then he came back to you
13 and said: "Can you make these changes for me?" Is
14 that correct?

15 A. Yes.

16 Q. Did you discuss this document with Mario
17 Rodriguez?

18 A. No.

19 Q. Where were you when you wrote this
20 document?

21 A. I was at the North in Santa Fe.

22 Q. And who was with you at that time?

23 A. Jerry Montoya was in the pod. There were
24 several SNM members. I know Jerry Montoya. My
25 neighbor was Jeremiah Martinez.

1 Q. And was Jerry Armenta in the pod with you?

2 A. No.

3 Q. How about Mario Rodriguez?

4 A. Mario was downstairs. Me and Jerry
5 Montoya both lived upstairs. Mario was downstairs.
6 Armenta was in the pod nextdoor to us.

7 Q. Was Jerry Montoya your neighbor?

8 A. No, ma'am. Over there there's 12 cells in
9 each pod. I lived in -- I can't remember the
10 number, but I lived on one corner, and he lived all
11 the way down the tier on the other corner.

12 Q. If we could start with the first
13 paragraph.

14 Mr. Martinez, I have up on the screen
15 Defendants' Exhibit FO. If you could read this,
16 please, to the jury.

17 A. "My name is Timothy Martinez, Inmate
18 Number 62543. I am incarcerated in the NMDOC. I am
19 giving this written statement to account for the
20 incident that took place on March 7, 2014, at SNMCF,
21 which resulted in the death of inmate Javier Molina,
22 Inmate Number 47299. The actions I am going to
23 speak about is true to my knowledge, due to
24 first-hand observation by me."

25 Do I continue reading, ma'am?

1 Q. Please.

2 A. "On the afternoon of March 7, 2014, at
3 SNMCF in 1-A B pod, me, the victim Javier, and
4 another individual were in Javier Molina's cell 105,
5 getting high on Suboxone. After we had finished
6 using, it was supposed to be Jerry Montoya, Inmate
7 Number 55095 and another individual's turn to go get
8 high in that cell. So when I finished using and
9 getting high in that cell, I motioned for Jerry
10 Montoya to come in, because it was his turn. At
11 this time, Jerry Montoya and another individual
12 entered cell 105."

13 Q. I'll stop you there. And who is the other
14 individual you were referring to?

15 A. On the very top part or the second?

16 Q. When you just read that "At this time" --

17 A. The last sentence?

18 Q. -- "another individual entered the cell."

19 A. That would be Jerry Armenta.

20 Q. Thank you. Continue.

21 A. "When they entered, Mr. Javier Molina
22 started to get verbally abusive and disrespecting."

23 Q. Let me stop there. Was that true?

24 A. No.

25 Q. And who came up with that statement?

1 A. That was just my way of -- because Javier
2 was known to be a bully, so it would be the most
3 believable thing at the time.

4 Q. So it was a credible statement because
5 other witnesses would confirm he was a bit of a
6 bully?

7 A. Yes, ma'am.

8 Q. Did you discuss with anyone else this
9 assertion that you were going to claim that Javier
10 Molina had gotten verbally abusive?

11 A. No, I wrote it, I gave it to him, to Mr.
12 Montoya, and whoever he discussed with, I have no
13 clue. When I wrote this, I didn't let anyone know
14 what I was writing or how I wrote it.

15 Q. So this is a statement by you alone?

16 A. Yes, ma'am.

17 Q. Continue reading.

18 A. "So at this time Jerry Montoya and another
19 individual entered cell 105. When they entered,
20 Mr. Javier Molina started to get verbally abusive
21 and disrespecting. At this time, I exited the room,
22 and so does one other individual."

23 Q. Let me stop there. Who is the other
24 individual you're referring to here?

25 A. Mario Rodriguez.

1 Q. And is that true, that at that time you
2 exited the room, and so did Mario Rodriguez?

3 A. No, ma'am. None of this is true.

4 Q. Keep reading.

5 A. "From what I saw, Mr. Molina was not
6 directing his attention to Jerry Montoya. So Mr.
7 Montoya was fixing up a shot for himself. At no
8 time" --

9 Q. Let me stop you. I'm sorry, I meant to
10 ask you one other question. When you said, "At this
11 time I exited the room and so does one other
12 individual," why did you write that?

13 A. Because we were done getting high. That
14 would be -- our story was, we were in there getting
15 high. I called them in to get high. The rooms are
16 small. There's no way enough room -- if you have
17 the diagram or layout of the cells in Cruces, it's a
18 little walkway about three feet wide, maybe seven
19 feet long. There's not enough room for all these
20 people in there, so --

21 Q. At the time you wrote this statement, you
22 knew that a video had caught you and Mario Rodriguez
23 walking out of Mr. Molina's cell; correct?

24 A. Yes, ma'am.

25 Q. So this statement would be consistent with

1 the independent evidence of the murder; correct?

2 A. Yes, ma'am.

3 Q. Okay. Keep reading.

4 A. "At no time did I ever witness Jerry
5 Montoya with any kind of weapon when we were all
6 inside the room. In fact, Jerry Montoya was" --

7 Q. I'm going to stop you there. So was that
8 true?

9 A. No, that's false, because I did see him
10 with the weapon.

11 Q. I think we're about five lines from the
12 top.

13 A. "In fact, Montoya was just focused on
14 getting high. Once I exited the cell, I go
15 downstairs to the common area. The next time I saw
16 Jerry Montoya, he was at the bottom of the
17 stairwell, where Mr. Molina looked to be acting
18 aggressively towards Jerry Montoya."

19 Q. I'm going to stop you there. And was that
20 true?

21 A. Yes, ma'am.

22 Q. So when --

23 A. Well, no, it's not, because the next time
24 I saw him was when Jerry walked out of the room.
25 But at the bottom of the stairwell, yes, Javier did

1 get in a fighting stance towards Mr. Montoya.

2 Q. Okay. And is that something that you knew
3 was captured on the video?

4 A. Yes, ma'am.

5 Q. So by making a statement that corresponded
6 with the video --

7 A. I don't know it was captured. Because I
8 hadn't seen the video. But I knew where the
9 videos -- I know where the cameras were placed. So
10 I assumed that. I had never seen the video of it,
11 so I didn't know exactly what was captured on it. I
12 just knew, by what STIU had told me, that we have
13 the whole thing on camera, and I knew where the
14 exact videos were. At that time, I didn't even know
15 the camera pointing into my room didn't work. I
16 figured they had me going in and out of my room the
17 whole time also. So at no point did I see the
18 video.

19 Q. But you were writing the statement. So if
20 someone was to read it and compare it to the video,
21 they would correspond?

22 A. Yes, ma'am.

23 Q. And that would make your statement more
24 credible to whoever was reading it?

25 A. Yes, ma'am.

1 Q. Continue reading.

2 A. "At which time, Jerry Montoya took a
3 fighting stance to defend himself. I saw Jerry
4 Montoya punch Mr. Molina a few times to get away
5 from Molina. At no time during this exchange did I
6 observe Jerry Montoya with any kind of weapon. At
7 this, I conclude this statement. This is the true
8 events on my eye account. I intend this statement
9 to override any prior statement I may have made,
10 making anything said to this point null and void."

11 Q. And when you talk about you intend this
12 statement to override any prior statement that you
13 may have made, you're referring to the March 10th --

14 A. Any statement that I'd made prior to that.

15 Q. The next page, please.

16 And if you could read that paragraph under
17 "Declaration Under Penalty of Perjury."

18 A. "Declaration Under Penalty of Perjury.
19 The undersign declares under penalty that he is
20 truthful and correct in everything that was written
21 down."

22 Q. Let me stop you there. Do you understand
23 what perjury is?

24 A. Yes. I have perjured in this statement by
25 making false accusations, by lying to the Court,

1 yes.

2 Q. That it's a crime for you to lie to the
3 Court?

4 A. Yes, ma'am.

5 Q. So by including this declaration, you were
6 intending to give weight to your statement; correct?

7 A. Yes, ma'am.

8 Q. It was something you were making, knowing
9 you could be prosecuted if it was false?

10 A. Yes, ma'am.

11 Q. Okay. Continue reading.

12 A. "Making this written statement a legal
13 document in the case of Jerry Montoya versus the
14 State of New Mexico. Respectfully submitted by
15 Timothy A. Martinez, 62543, PNM" --

16 Q. You can stop there.

17 A. Okay.

18 Q. So you were aware, when you wrote this
19 statement, that it might be used in a court of law;
20 correct?

21 A. Yes, ma'am.

22 Q. And then you testified that after you
23 wrote this statement, you gave it to Mr. Montoya,
24 and he sent back some revisions; correct?

25 A. Yes, ma'am.

1 Q. I'd like to show you what has been
2 admitted as Defendants' Exhibit FK.

3 MS. DUNCAN: May I approach, Your Honor?

4 THE COURT: You may.

5 A. This is the one that's already been
6 entered; right?

7 BY MS. DUNCAN:

8 Q. Yes, this is Defendants' Exhibit FK. So
9 this statement is dated November 3, 2014; correct?

10 A. Yes, ma'am.

11 Q. Is this the statement that you wrote after
12 you conferred with Mr. Montoya?

13 A. Yes, ma'am. That's the final draft.

14 Q. If we can go to the revised. Thank you.

15 So can you tell -- before we read this
16 statement, what changes did Mr. Montoya want you to
17 make?

18 A. He wanted it to be more where it's just
19 pretty much -- because he started pointing out,
20 "Well, this ain't looking good; this ain't looking
21 good. Put in there that he is a bully." I mean,
22 why he made any prior statements. You know what I
23 mean? So that's where we came up with this one.

24 For the more Suboxone use, that he came to
25 the conclusion that it would look better if I said I

1 was heavily under the influence of drugs. Any prior
2 statement would look like I was in a drug-induced
3 haze.

4 Q. So you said a couple of things there. So
5 he said to you that he wanted more about Mr. Molina
6 being a bully; is that correct?

7 A. Yeah, he wanted to make sure that -- he
8 wanted to reiterate the reason I'm doing it, like I
9 say, was I'm under the influence of narcotics. I
10 mean, right there, I was afraid, you know what I
11 mean, saying, "Why did you make that statement?"
12 Because I was afraid of what was going on. I was
13 afraid of being prosecuted. I was afraid of
14 everything in that aspect.

15 Q. So at the time that you wrote this revised
16 statement, Mr. Montoya was aware that you had
17 previously given a statement to the police; correct?

18 A. Yes, ma'am. I'm sure he had the State
19 discovery. He was charged in the state. I had
20 still never seen it.

21 Q. Okay. If you could start reading this.

22 A. "Revised statement. I, Timothy Martinez,
23 am writing this revised statement on my own free
24 will due to the fact that the statement I gave on
25 March 10, 2014, was false and made-up. So with that

1 said, I want to recant my original statement and
2 provide this one. I had made up that stuff because,
3 Number 1, I was afraid. Number 2, I was heavily
4 under the influence of Suboxone. And Number 3,
5 Mr. Molina was my friend, and I did not want to say
6 the truth about him starting it.

7 "So I am now going to give an account of
8 what happened. Me, Molina, and one other individual
9 were inside Molina's cell getting high on Suboxone.
10 After I was done getting high, I called Jerry
11 Montoya and one other individual into the room so
12 they could get high."

13 Q. Let me stop you here. So this statement
14 that you just made about calling Jerry Montoya and
15 one other individual into the room to get high --
16 that's the same statement you made in the earlier
17 September version?

18 A. Yes.

19 Q. And was that true?

20 A. No, ma'am.

21 Q. Keep going. I'm sorry, did Mr. Montoya
22 ask you to make any changes to that part of the
23 story about calling him in to use Suboxone with you?

24 A. No.

25 Q. Continue.

1 A. "After I was done getting high, I called
2 Jerry Montoya and one other individual into the room
3 so they could get high. At this time I gave Jerry
4 Montoya a piece of Suboxone. I also gave a piece to
5 the other individual. This is when an argument
6 between Javier Molina and the other individual
7 started arguing about using the syringe. Jerry
8 Montoya was writing" --

9 Q. Stop there. So when you say that Javier
10 Molina and the other individual started arguing
11 about using the syringe, who was the other
12 individual?

13 A. Jerry Armenta.

14 Q. And is this one of the facts that you had
15 discussed with Mr. Montoya?

16 A. At this time, him and Armenta were down
17 there talking and figuring out how they want it to
18 be. So, yes, he said that that needed to be put in
19 there, because that was what Armenta was saying,
20 too, that he went in, he was trying to claim
21 self-defense, saying that Molina was threatening him
22 and starting it over a syringe.

23 Q. So Mr. Molina and -- Mr. Armenta and Mr.
24 Montoya had tried to get their stories together and
25 have your story match their story; correct?

1 A. Yes, ma'am.

2 Q. And did they specifically tell you to
3 mention that the fight was about a syringe?

4 A. Well, it wasn't -- that was just the
5 initial part. That was the initial part of him
6 saying, "All right." That was, like, the reason to
7 start an argument. It wasn't the sole reason of the
8 argument. That was just the reasoning to start it.
9 Because the syringe would be -- a lot of people in
10 prison culture, they use drugs intravenously, they
11 shoot up, you know what I mean? So when he says,
12 "No," you say about the syringe, it's a common
13 thing. Anyone that knows prison would know
14 syringes, drugs, prison all go hand in hand.

15 Q. So it's common for people who use drugs in
16 prison to argue over syringes?

17 A. Yes, it is.

18 Q. So it's something that other witnesses
19 could corroborate?

20 A. Yes.

21 Q. Okay. Continue, please.

22 A. "Jerry Montoya was waiting to get high,
23 but never did, because Javier Molina was too busy
24 arguing with the other individual. At no time did I
25 personally ever see Jerry Montoya act aggressively

1 or combative toward Javier Molina. I can also say I
2 never saw Jerry Montoya with any type of weapon.
3 End of statement."

4 Q. And those last two statements here, that
5 at no time did you personally ever see Jerry Montoya
6 act aggressively or combative towards Javier
7 Molina -- was that the truth?

8 A. No, ma'am.

9 Q. And did anyone help you write that
10 statement?

11 A. No, ma'am. Well, I wrote it on my own,
12 but they gave me -- Jerry Montoya gave me his input
13 on what I needed. They didn't tell me how to write
14 it. I wrote it on my own. But they said: "Mention
15 this, this, and this."

16 Q. And is this one of the things that Jerry
17 Montoya mentioned that he wanted you to add in your
18 letter?

19 A. No, because that's pretty much what I said
20 in the first letter.

21 Q. So can you tell me, looking at this, which
22 parts -- I wonder if I could just do it on the Elmo.
23 Please switch over.

24 Which parts of this Jerry Montoya or Jerry
25 Armenta helped you -- or had input in writing? Can

1 you see it there?

2 A. It's kind of dark. The part being, I was
3 afraid, Number 1, because in my March 10th, that was
4 the reason I said there's people running in and I
5 was afraid.

6 Q. It wasn't -- when you were saying that you
7 were afraid, this was a reason to explain why you
8 had given a false statement?

9 A. Yes. You know what I mean? So -- and my
10 previous statement on March 10th would show that I
11 had been afraid, whether it was for my life, or
12 whatever; I was just nervous and afraid of being
13 charged, period. I was heavily under the influence
14 of Suboxone; he wanted me to add that.

15 Q. Again, by saying that you're heavily under
16 the influence of Suboxone, that would explain why
17 you would give a false statement implicating him;
18 correct?

19 A. Yes, ma'am. He wanted me to -- actually,
20 it was his idea for him to mention my friendship
21 with Javier, you know what I mean, because I didn't
22 mention anywhere in my first statement how close me
23 and Javier were. You know what I mean?

24 Q. Did he tell you why he wanted you to
25 mention your friendship with Javier?

1 A. Because he said that would be a good
2 reason why you wanted to lie, to keep him out of it.
3 Like I was pretty much protecting Javier.

4 Q. So you were protecting Javier's memory
5 from an allegation that he had been aggressive?

6 A. That, and at the end of the day, he wanted
7 me to say it so I could protect him, and it would
8 show -- yeah, like I said, perfect; didn't want
9 to -- the man is dead, unfortunately. You know what
10 I mean? And like I say, I'm not proud of that
11 action at all and being part of it. But he says,
12 "That would be a great way, use your friendship to
13 say you were trying to cover up, to help keep his
14 name halfway good, so he didn't look like a bad
15 guy."

16 Q. And -- okay. And it makes the statement
17 more credible, is why you did it?

18 A. Yes, ma'am.

19 Q. Anything else in this statement that Mr.
20 Montoya gave you input on?

21 A. The syringe part, saying why, that they
22 needed that part in there to say it started over a
23 syringe.

24 Q. Anything else?

25 A. No, ma'am.

1 Q. And after giving -- did you give a
2 statement to Mr. Montoya?

3 A. I gave to it him so he could mail it to
4 his lawyer.

5 Q. And after you gave this -- I'm sorry, let
6 me go to page 2 of this. So on the back we have
7 here a "Declaration Under Penalty of Perjury";
8 correct?

9 A. Yes, ma'am.

10 Q. And again, you added this here because you
11 understood that it was a crime to lie to the Court?

12 A. Yes, ma'am.

13 Q. And so signing under declaration of
14 penalty of perjury gave weight to your statement?

15 A. Yes, ma'am.

16 Q. After writing this statement in November
17 of 2014, you wrote one more statement for Mr.
18 Montoya; correct?

19 A. I don't know.

20 Q. Did you give a declaration, an affidavit
21 to his counsel?

22 A. Yeah. I didn't write that. His counsel
23 wrote that up, and I just signed it. So I did not
24 write it up at all. Mr. Esparza was his lawyer at
25 the time. He's the one that came up with it after

1 the interview that we did. Because I was going to
2 be Mr. Montoya's witness. He came up with those
3 points and said: "All right, what are you willing
4 to sign off on?"

5 Q. And you made some corrections to the
6 affidavit; correct?

7 A. Yes, me and my counsel did. I had a
8 lawyer at the time, which is actually the lawyer on
9 the state case, which is Mr. Steven Almanza.

10 MS. DUNCAN: Your Honor, can I approach?

11 THE COURT: You may.

12 BY MS. DUNCAN:

13 Q. Mr. Martinez, I'm showing you what's been
14 marked as Defendant's Exhibit FP.

15 A. Yes, I remember this.

16 Q. Is that the affidavit that Mr. Montoya's
17 lawyer wrote and you made handwritten changes to?

18 A. Yes, ma'am. Mr. Montoya's lawyer gave it
19 to my lawyer, and my lawyer brought it to me. And
20 me and my lawyer went over it and made some changes
21 to it. Then my lawyer took it back to his.

22 MS. DUNCAN: Your Honor, we would move to
23 admit Defendants' Exhibit FP.

24 THE COURT: Any objection, Ms. Armijo?

25 MS. ARMIJO: No, Your Honor.

1 THE COURT: Any objection from any other
2 defendants?

3 MR. JEWKES: Just for clarification, what
4 is the exhibit number again?

5 MS. DUNCAN: Exhibit FP, as in Peter.

6 THE COURT: Not hearing any objection,
7 Defendants' Exhibit FP will be admitted into
8 evidence.

9 (Defendants' Exhibit FP admitted.)

10 BY MS. DUNCAN:

11 Q. Mr. Martinez, this is an affidavit by you;
12 correct?

13 A. Yes, ma'am.

14 Q. And it's an affidavit that was drafted
15 after you submitted to an interview with Mr.
16 Montoya's attorney and the district attorney in the
17 state case; correct?

18 A. Yes, ma'am.

19 Q. And during that interview, you told the
20 state prosecutor and Mr. Montoya's attorney that you
21 never saw Jerry Montoya stab Mr. Molina; correct?

22 A. Yes, ma'am.

23 Q. And this affidavit is confirming that
24 statement that you gave to the prosecutor, Mr.
25 Montoya's attorney; correct?

1 A. Yes, ma'am.

2 Q. If you could read paragraph 3 of the
3 affidavit?

4 A. "As I informed both parties of this
5 interview, I did not see Jerry Montoya stab Javier
6 Molina, nor I did ever see him with a weapon."

7 Q. Is that statement true or false?

8 A. That's false.

9 Q. And you said that you wrote in the
10 corrections -- or is that your handwriting: "Did I
11 ever see him with a weapon?"

12 A. Yes, ma'am. I marked it out where -- you
13 could see where I scratched out what they had, and I
14 added in what I --

15 Q. And you wrote that statement in
16 consultation with your lawyer; correct?

17 A. Yes, ma'am.

18 Q. Did you tell your lawyer that the
19 statement was true?

20 A. My -- yes, yes, ma'am.

21 Q. And is it true?

22 A. No, ma'am.

23 Q. And if you could read paragraph 4.

24 A. "The only thing I saw Jerry Montoya do is
25 fight with his fists with Javier Molina." That also

1 is false.

2 Q. Number 5, please.

3 A. I cannot read it.

4 Q. Here. We're going to get it for you.

5 A. "The only person that I saw with any
6 weapon and use it on Javier Molina was Jerry
7 Armenta. I saw Mr. Armenta stab and kick Javier
8 Molina repeatedly on March 7, 2014."

9 Q. Was this statement true or false?

10 A. That's false.

11 Q. You also saw Mr. Montoya with a weapon;
12 correct?

13 A. Yes, ma'am.

14 Q. If you could read paragraph 7.

15 A. "That in no way did I participate in the
16 murder of Javier Molina or know that Javier Molina
17 would be stabbed on March 7, 2014."

18 Q. Is that true or false?

19 A. False.

20 Q. And did you tell your attorney it was
21 true?

22 A. At that time, yes. At that time, like I
23 say, I was never criminally charged. I just hired
24 an attorney to advise me during this.

25 Q. And you -- but you said you reviewed this

1 with your attorney, made the corrections with your
2 attorney; correct?

3 A. Yes, ma'am.

4 Q. And then you signed this affidavit upon
5 penalty of perjury; correct?

6 A. Yes.

7 Q. Under an oath to tell the truth; correct?

8 A. I signed it at the state penitentiary.
9 There's no officials other than my lawyer there when
10 I signed it. So I never officially took an oath. I
11 knew what I was signing, but I never officially took
12 an oath. I signed it in the visiting room.

13 Q. Can we look at the top of that document,
14 or just right there?

15 So right under the header "Affidavit of
16 Timothy Martinez," it says, "I, Timothy Martinez,
17 upon oath, do state the following."

18 A. Right. Like I said, I never took a formal
19 oath. I knew it was a legal document, so I knew
20 what it was.

21 Q. When you said "upon oath," what did you
22 mean?

23 A. That I was saying the truth; that I was
24 going to get up on the stand and say, yes, that's,
25 in fact, what happened.

1 Q. And you took an oath when you testified
2 today; correct?

3 A. Yes, ma'am.

4 Q. Mr. Montoya's case never went to trial
5 because the federal government took over the
6 prosecution; correct?

7 A. Yes, ma'am.

8 Q. So you were also indicted in December of
9 2015?

10 A. Yes, ma'am.

11 Q. You were charged with the murder of Javier
12 Molina; correct?

13 A. Yes, ma'am. And also conspiracy to it.

14 Q. And in December of 2016 is when you
15 decided to cooperate with the federal government;
16 correct?

17 A. Yes, ma'am.

18 Q. Up until that point, you'd been housed
19 with other defendants in this case; correct?

20 A. Yes, ma'am.

21 Q. And can you tell me, please, who are the
22 other defendants you were housed with?

23 A. For the first six months I was housed in
24 Otero County, right here in Chaparral, New Mexico.
25 In my housing unit, where I was, was myself, David

1 Calbert, Joe Lawrence Gallegos, Allen Patterson,
2 Christopher Chavez, Leonard Lujan, Billy Garcia,
3 Arturo Garcia, Eugene Martinez, Edward Troup. There
4 might be a few more. I'm not sure. There's a good
5 handful. Conrad Salazar. He's not officially in
6 this case, but he's an SNM member.

7 Q. Were you housed with Jerry Montoya?

8 A. Jerry Montoya, yeah. Chris Garcia.

9 Q. And long were you in Otero County?

10 A. I was there for six months. Not all of
11 those individuals were there for six months. Some
12 of them were there for four or five months before
13 some of them got shipped to Estancia, which is
14 Torrance County. That was in my housing unit. The
15 other housing unit was Carlos Herrera, Daniel
16 Sanchez, Mario Rodriguez, Archie Varela, and for a
17 short period of time was Roy Martinez.

18 Q. So were you transferred to Otero County
19 right after the indictment in early December 2015?

20 A. Yes, ma'am.

21 Q. And then you were there for six months
22 till June of 2016?

23 A. Yes, ma'am.

24 Q. At that point, you went to Torrance
25 County?

1 A. Yes, ma'am. We had a court hearing in
2 Albuquerque. And at that hearing, me and Mr.
3 Herrera were switched out. Mr. Carlos Herrera was
4 in Estancia, and I was in Otero, and they switched
5 us two out.

6 Q. How long were you in Torrance County
7 Detention Center?

8 A. For six months.

9 Q. So until you decided to cooperate?

10 A. Yes, ma'am.

11 Q. Who was in Torrance County with you?

12 A. Okay. Mr. Perez, Antone Cordova, Andrew
13 Gallegos, Manuel Benito, Daniel Archuleta, Vincent
14 Garduno, Edward Troup, David Calbert, Mandel Parker,
15 myself, Arturo Garcia, Sergio Rodriguez, Jerry
16 Montoya, Billy Garcia. I know I'm probably missing
17 a few in there.

18 Q. That's good. Thank you for that.

19 A. Richard Gallegos. Yeah, there was a good
20 handful of us over there in that pod. There was
21 more out on the line, but the ones directly involved
22 in this case, we were all housed in one pod.

23 Q. Now, January 26, 2017, is when you signed
24 the guilty plea; correct?

25 A. Yes, ma'am.

1 Q. And you also signed the addendum to the
2 plea agreement?

3 A. Yes, ma'am.

4 Q. Where you agreed to testify for the
5 Government?

6 A. Yes, ma'am.

7 Q. And you understand from the addendum that
8 whether or not you get a reduced sentence in this
9 case depends in the first instance on the people at
10 this table; correct?

11 A. What do you mean?

12 Q. They get to decide whether to file a
13 motion for a downward departure?

14 A. Yes, ma'am.

15 Q. And they don't have to?

16 A. Yes, ma'am. There's nothing promised.

17 Q. Now, in addition to the possibility of a
18 reduced sentence in this case, you've gotten some
19 other benefits as a Government witness; correct?

20 A. Such as?

21 Q. You've been given money by the federal
22 government; correct?

23 A. \$50 a month.

24 Q. But you've been given over \$1,100 by the
25 Government over the months; correct?

1 A. No. If you do the math, at \$50 a month,
2 that does not nowhere come close to \$1,100.

3 Q. So if the Government has represented that
4 you received over \$1,000, \$1,050, they would be
5 incorrect?

6 A. I don't know. Like I say, I'm getting \$50
7 a month. My math doesn't add up to that much. As I
8 said earlier, I had to get into my tablet to get
9 math homework help. But I'm pretty sure that don't
10 equal up.

11 Q. Do you recall on September -- or I'm
12 sorry, on December 12, 2017, receiving \$300 from
13 Nancy Stemo?

14 A. From Nancy Stemo? On my inmate account it
15 does not show anything from a Nancy Stemo.

16 Q. Do you know who Nancy Stemo is?

17 A. Yes, ma'am.

18 Q. And she's an FBI agent; correct?

19 A. Yes, ma'am.

20 Q. Do you recall signing a receipt of \$300
21 from Nancy Stemo?

22 A. I don't remember whose name was on it. I
23 remember signing a receipt.

24 Q. And the payment was \$300?

25 A. Yes.

1 Q. And that was December 12, 2017; correct?

2 A. Give or take, somewhere around there.

3 Q. I can show it to you. Would that help
4 refresh your memory?

5 A. Like I say, I don't know the exact date,
6 but I remember signing a receipt.

7 Q. At that time, you had gotten more than
8 \$50; correct?

9 A. I thought it was a Christmas present.

10 Q. I didn't ask you what you thought it was.
11 But it was more than \$50; correct?

12 A. Yes, ma'am.

13 Q. And September 28 of 2017, you received
14 \$100 from the Government, also from Nancy Stemo;
15 correct?

16 A. I don't know who places it on it, but I
17 remember signing a receipt.

18 Q. In August of 2017, you received another
19 payment of \$300; correct?

20 A. In August?

21 Q. August of 2017?

22 A. Around there.

23 Q. In May of 2017 you received \$200 from
24 Agent Acee?

25 A. I signed a receipt. I don't know if it

1 was specifically from him.

2 Q. Well, sure. I mean, he's a representative
3 of the federal government; correct?

4 A. Yes.

5 Q. So you received \$200 from the federal
6 government?

7 A. Yes, ma'am.

8 Q. And on March 10th, 2017, you signed a
9 receipt for \$200; correct?

10 A. March 10th. Around there, probably.

11 Q. So we have a receipt for \$200. Another
12 receipt for \$200. So you agree with me that's \$400?

13 A. Yes, ma'am.

14 Q. And then another receipt for \$300? We're
15 now up to \$700?

16 A. Yes, ma'am.

17 Q. And another receipt for \$100, so we're now
18 up to \$800; correct?

19 A. Yes, ma'am.

20 Q. And then finally, last year, another
21 receipt for \$300; correct?

22 A. Yes, ma'am.

23 Q. That's \$1,100; correct?

24 A. Yes.

25 Q. That's over \$1,000.

1 A. Yes, ma'am.

2 Q. You were also permitted to visit with your
3 wife at a plea hearing; correct?

4 A. Yes.

5 Q. And special arrangements were made for
6 that?

7 A. I don't know if it was special
8 arrangements. I'm sure they had to get the
9 marshal's approval here. It was at this courthouse
10 in the legal -- it wasn't even a contact visit. It
11 was the legal visiting room.

12 Q. Have you ever been given contact visits
13 with your wife?

14 A. When I was housed at the North facility.
15 It wasn't due to the FBI. How the North facility
16 was set up, all the cooperators they were letting
17 get contact visits. I was able to get one visit.

18 Q. So that was when you were housed at PNM
19 level North with other Government witnesses?

20 A. Yes.

21 Q. And the Government witnesses in the pod
22 were given contact visits at that time?

23 A. Yes, ma'am.

24 Q. And were you also given extra phone calls?

25 A. Not that I know of.

1 Q. Were your phone calls limited when you
2 were at PNM North in the cooperator pod?

3 A. No, I didn't know there was a reason to be
4 limited.

5 Q. Well, the question was: Were they
6 limited?

7 A. No.

8 MS. DUNCAN: Your Honor, if I could just
9 have a moment.

10 THE COURT: You may.

11 BY MS. DUNCAN:

12 Q. So if the Government had represented as a
13 result of your cooperation with them you receive
14 more telephone calls than a typical inmate at a
15 Level 6 facility, would you say that was wrong?

16 A. If they got involved? Possibly. Like I
17 say, I wasn't a typical inmate. In the North I
18 wasn't doing no part of a state program. I was a
19 federal inmate there.

20 Q. A federal cooperating witness; correct?

21 A. A federal cooperating. But the North does
22 have a contract with the marshals to hold federal
23 inmates.

24 Q. Correct. So -- but you -- there were no
25 limits on your phone calls?

1 A. None of the federals have limits.

2 Q. The people in your pod were all Government
3 witnesses; correct?

4 A. Yes.

5 Q. You testified that you were with Anthony
6 Baca at the Southern New Mexico Correctional
7 Facility. You were with him -- and that was in
8 2013; correct?

9 A. Yes, I want to say so.

10 Q. And the two of you were at the Southern
11 New Mexico Correctional Facility for only a few
12 months together in 2013; correct?

13 A. Yes, ma'am.

14 Q. You also testified you were with Mr. Baca
15 at PNM North in 2015?

16 A. In October, yes, ma'am.

17 Q. And you were only together in PNM North
18 for about a week?

19 A. About a week.

20 Q. And you've never -- before 2013 you had
21 never talked to Anthony Ray Baca; correct?

22 A. I had never met him personally before
23 then.

24 Q. And those were the only two times you were
25 personally in contact with Anthony Ray Baca?

1 A. Correct.

2 MS. DUNCAN: I have no further questions
3 at this time.

4 THE COURT: Thank you, Ms. Duncan.

5 Anyone else have cross-examination?
6 Mr. Jewkes?

7 CROSS-EXAMINATION

8 BY MR. JEWKES:

9 Q. Good afternoon, Mr. Martinez. I'd like to
10 clarify two points as to testimony that you have
11 previously given. Earlier today I believe you told
12 us that when Ms. Armijo showed you some photographs,
13 if I understood you correctly, the number 19 has
14 significance?

15 A. Yes, sir.

16 Q. What is the significance?

17 A. The S is the 19th letter in the alphabet.
18 And that's one of our signs, is the S. They call us
19 the big S, for Sindicato de Nuevo Mexico.

20 Q. Okay. Ms. Armijo showed you 564.

21 MR. JEWKES: May I approach the witness?

22 THE COURT: You may.

23 BY MR. JEWKES:

24 Q. Do you recognize it?

25 A. Yes, sir.

1 Q. This is a tattoo of your back?

2 A. Yes.

3 Q. Now, we have what you call a charra;
4 right?

5 A. Yes, sir.

6 Q. A Chihuahua cowgirl. And she has two
7 bandoleers, and there are bullets in those
8 bandoleers. If you count them -- and I would urge
9 you to do that -- you're going to find out it's less
10 than 19.

11 A. I was going on what Daniel said. I can
12 never really truly see my back, sir. Daniel is the
13 one that told me he put 19. So I've always assumed
14 it to be true.

15 Q. I'm just curious. Would there be any
16 significance as to why there wasn't exactly 19
17 cartridges in there or --

18 A. Like I say, me and Daniel have always had
19 disagreements, and he's never truly looked at me as
20 a carnal.

21 Q. So you're saying that was intentional on
22 the part of Mr. Sanchez?

23 A. More than likely, if that's the case, yes.

24 Q. You and Mr. Sanchez had problems before?

25 A. Yes, sir. We've had minor disagreements

1 throughout the past.

2 Q. There was an instance -- correct me if I'm
3 wrong -- let me get the date for you. The end of
4 2013, both of you were at the Southern New Mexico
5 Correctional Facility?

6 A. Correct, sir.

7 Q. And there was a handball game going on,
8 was there not?

9 A. Yes, sir.

10 Q. And who was playing handball?

11 A. Me; your defendant, your client; and
12 Molina, and one more person. I cannot remember who
13 played teams.

14 Q. My client?

15 A. Yes, sir, your client, Daniel Sanchez.

16 Q. So tell us once again who was teamed up?

17 A. Me and Javier Molina. I want to say me
18 and Javier, because me and him had been partners
19 for --

20 Q. You and Javier Molina?

21 A. Yes. We were always partners.

22 Q. And who was on the other side?

23 A. Daniel -- and like I say, I don't remember
24 who. I want to say Fred Martinez, but I'm not
25 positive, so I'm not going to make that a final

1 answer.

2 Q. But Daniel Sanchez and some other
3 individual?

4 A. Yes, sir.

5 Q. And there was apparently a disagreement?

6 A. Yes, sir, me and Daniel were both the
7 front man that day, yes. He'd hit the ball, he
8 jumped over, and I slapped his ass.

9 Q. You slapped Mr. Sanchez?

10 A. Yes, which led to the argument.

11 Q. Because you didn't like him?

12 A. Yeah, in my way, yeah.

13 Q. Come on. You don't like Daniel Sanchez.

14 A. It's not that I don't like him. Me and
15 him just have different views on life.

16 Q. It almost came to blows?

17 A. Yes, sir.

18 Q. So after that, to try to mend fences, Mr.
19 Sanchez agreed to give you a tattoo?

20 A. Yes, sir.

21 Q. But you didn't take that necessarily as a
22 peace offering, did you?

23 A. It's -- not necessarily. I allowed him to
24 do it for a fact, showing him -- in prison, when you
25 give someone your back, it's a deadly gesture. You

1 can intentionally die showing someone your back. So
2 in my way, he did it for his own agenda, and I did
3 it -- yeah, I'll let you work on my back, to give
4 you my back, to show you I'm not afraid of him.

5 Q. Mr. Martinez, let's talk about April 4,
6 2014.

7 A. All right.

8 Q. Do you recall that administrative hearing?

9 A. Yes, sir.

10 Q. That was at Southern New Mexico; correct?

11 A. Yes, sir.

12 Q. And the hearing officer -- I believe his
13 name was Ricardo Vallendia?

14 A. No, sir.

15 Q. It was not?

16 A. No, sir.

17 Q. Who was it?

18 A. Sallendia.

19 Q. S-A-L-L-E-N-D-I-A?

20 A. Your guess is as good as mine on how to
21 spell his last name, sir.

22 Q. But we're close, aren't we?

23 A. Sounds good.

24 Q. Not enough to start an argument over;
25 right?

1 A. No.

2 Q. Okay. Mr. Sallendia, a hearing officer, I
3 believe, for the State of New Mexico?

4 A. Yes, sir.

5 Q. And this concerned your conduct on March
6 7? In other words --

7 A. Yes, sir.

8 Q. -- the investigation of Javier Molina. At
9 that time, you were represented by another inmate,
10 were you not?

11 A. Yes, sir.

12 Q. Tremaine Jernigan?

13 A. Yes, sir.

14 Q. Had he represented you before?

15 A. No, sir. I had barely met him after that
16 incident took place. He was my neighbor in Seg.

17 Q. Was there any particular reason why you
18 used Mr. Jernigan? Was he experienced in this sort
19 of thing?

20 A. No, not necessarily. Between the both of
21 us, we figured we'd have a better shot. But I'd
22 never known him before. He said he knew legal work.
23 I've known legal work myself. But we figured two
24 heads are better than one.

25 Q. Very well. And do you recall at one point

1 in time the hearing officer asking you what happened
2 and you saying you didn't know because you weren't
3 there, referring to the incident involving
4 Mr. Molina?

5 A. Yes, sir.

6 Q. Okay. So at that time, you were denying
7 any knowledge of the assault on Javier Molina?

8 A. Yes, sir, due to the fact I knew there was
9 pending legal charges still in the works.

10 Q. Okay. And at another time do you recall
11 asking the hearing office if you'd be able to
12 challenge the credibility of the CIs?

13 A. Yes, sir.

14 Q. What are CIs?

15 A. Confidential informants.

16 Q. You were concerned about confidential
17 informants during that hearing?

18 A. Yes, sir.

19 Q. Why were you concerned?

20 A. Because we had already had -- we got
21 suspicious that Jerry Montoya was already
22 cooperating with the STIU. And in order to be found
23 guilty on confidential information, it has to be
24 corroborated by two or more individuals.

25 Q. I'm sorry?

1 A. To be found guilty on confidential
2 information, it has to be by at least two or more
3 individuals.

4 Q. You're talking about in one of these
5 disciplinary --

6 A. Yes, sir.

7 Q. And then later you became a confidential
8 informant?

9 A. Yes, sir.

10 Q. Then do you recall another point in the
11 hearing where the hearing officer asked if you admit
12 or deny the allegations, and your response was: In
13 essence you deny it?

14 A. Yes. That's what we do. I didn't get up
15 there and say, "Yes, I did it." We're in prison.
16 We always deny.

17 Q. You always deny in prison?

18 A. Yeah. Well, when you're facing a
19 disciplinary hearing, you're trying to beat that
20 report. No one wants to get stuck in Seg, so you're
21 trying to beat that report.

22 Q. I see.

23 A. And if you look further into my
24 disciplinary packet, you'll see multiple statements
25 where, in fact, Daniel Sanchez' brother had wrote me

1 a statement and that was I had paid him to write
2 that statement with dope. I had a statement on me,
3 they were all trying to get me off. So it was a
4 consensus thing, we'll get you off.

5 Q. But Mr. Martinez, no one is asking you
6 about Ronald Sanchez.

7 A. No, I know. I was saying, if you want to
8 bring up certain parts of that report in that
9 hearing, you know, bring up the whole thing. So
10 don't be giving the jury one little piece of it.

11 Q. Ronald Sanchez did not appear during that
12 hearing.

13 A. No, but his statement was entered.

14 Q. But there is no record of it, is there?

15 A. My disciplinary hearing, yes, there is,
16 because I used it along with my habeas corpus I
17 filed on it.

18 Q. It's not in this transcript.

19 A. I don't know. I know it's been entered.

20 Q. Mr. Martinez, what --

21 MR. JEWKES: If I may have a moment, Your
22 Honor?

23 THE COURT: You may.

24 BY MR. JEWKES:

25 Q. Moving forward to -- or actually, back to

1 March 7, 2014, Daniel Sanchez never ordered you to
2 kill anyone, did he?

3 A. He had Mario Rodriguez tell me.

4 Q. No, no, the question, sir: Did Daniel
5 Sanchez order you to do anything?

6 A. He said I had to get it done or else, when
7 I had that conversation with him in the vent.

8 Q. Mario Rodriguez was the one that was
9 giving you instructions; do you agree with that?

10 A. Yes, Mario is one that told me. But like
11 I said, in the vent, Daniel Sanchez says, "You
12 better get it done, or else." So, therefore, he's
13 ordering me. Dan was a senior member in that pod.
14 He had to tell what would happen.

15 Q. But you were taking orders from Mario.

16 A. I'm just a soldier; I have to.

17 Q. But actually, both of you, you and Mario,
18 were raised together, were you not?

19 A. Yes, we were. And that's why he used
20 Mario to tell me.

21 Q. And when you come right down to it, you're
22 tougher than Mario, aren't you?

23 A. We've had our squabbles in the past.

24 Q. But you're tougher, aren't you?

25 A. Maybe now.

1 Q. Maybe then?

2 A. Probably. But I have my loyalty for the
3 family. I was loyal to the family. And if that's
4 what had to be done, I had to go. Like I say, I
5 think Daniel knew that if he told me, I'd have
6 disputed it more. So he used Mario's and my
7 friendship to his advantage, because he knew I'd go
8 with Mario.

9 Q. Mr. Martinez, your story is
10 well-rehearsed.

11 A. I don't know about rehearsed.

12 MS. ARMIJO: Objection, argumentative.

13 THE COURT: Well, sustained.

14 BY MR. JEWKES:

15 Q. Let's try question/answer, Mr. Martinez,
16 one at a time, without freewheeling.

17 First of all, you've been convicted of
18 attempted aggravated burglary?

19 A. Yes, sir, as part of my plea deal.

20 Q. Aggravated assault on a police officer
21 with a deadly weapon?

22 A. Two counts of it, yes, sir.

23 Q. Two counts. Then another aggravated
24 assault with a deadly weapon?

25 A. Yes, sir.

1 Q. Possession of a firearm by a felon?

2 A. Yes, sir.

3 Q. False imprisonment?

4 A. Yes, sir.

5 Q. In 2003, in the Sixth Judicial Court of
6 Hidalgo County, possession of a controlled
7 substance?

8 A. Yes, sir.

9 Q. 2004, in the Second Judicial District
10 Court of Bernalillo County, armed robbery with a
11 deadly weapon?

12 A. If you want to call a BB gun a deadly
13 weapon, yes, sir.

14 Q. A BB gun?

15 A. Yes, sir.

16 Q. What type of robbery was it?

17 A. We robbed a pizza man with a BB gun.

18 Q. A pizza delivery guy?

19 A. Yes.

20 Q. But, sir, you told us you were successful
21 in the drug business. Why would you have to hold up
22 a pizza delivery kid, or guy?

23 A. We thought it was funny at the time. It
24 was. I had money in my pocket.

25 Q. It was a joke?

1 A. Yeah. Me and my buddies, we thought it
2 would be funny, and all that. I mean, we were
3 young, we were dumb. I was young and dumb. And I
4 didn't think of the consequences till after the
5 fact.

6 Q. How old were you in 2004?

7 A. I just turned 21.

8 Q. How long have you been in the drug
9 business?

10 A. Since was about 15, 16.

11 Q. How long did you -- were you in the Marine
12 Corps, sir?

13 A. I went in going on a year and a half,
14 about a year and a half.

15 Q. But I take it when you left the Marine
16 Corps it was without an honorable discharge?

17 A. It wasn't honorable, but it wasn't
18 dishonorable either. It was just a general
19 discharge, other than honorable general discharge.

20 Q. A general?

21 A. Yes, sir.

22 Q. What kind of problems did you have in the
23 Marine Corps?

24 A. I got an Article 15, Section B discharge
25 for fighting with a superior officer.

1 Q. In other words, you struck an officer?

2 A. Yes, sir.

3 Q. Mr. Martinez, you were aware, were you
4 not, that Mario Rodriguez wanted Javier Molina
5 killed even before March of 2014?

6 A. No, I wasn't aware he wanted to kill him.

7 In fact, there was an incident, December,
8 January, I had brought in some meth. I had meth. I
9 got Mario high. And that's actually when I found
10 out that there was paperwork on Javier. And at that
11 point, if we would have let Mario have his way, he
12 wanted me and Fred Martinez just to go beat him up
13 and roll him out of the pod.

14 And I told Mario, "You're just high. You
15 don't know what you're talking about. You're high.
16 Schizo. Once you're sober, we'll talk about it."

17 So I don't know if he necessarily wanted
18 him dead, no. At that point in time he told me and
19 another SNM member, Efraim Martinez, just to go beat
20 him up.

21 Q. Actually, he wanted you and Efraim
22 Martinez to work him over; do you recall?

23 A. Beat him up, yes. Beat him up good,
24 because he knows I could fight.

25 Q. Um-hum.

1 A. Not necessarily kill him. At no point did
2 he ever say: "I want him dead." At no point did he
3 ever say: "Kill him." He said: "Beat him up good,
4 get him out of here."

5 Q. He didn't trust --

6 A. Javier.

7 Q. He didn't trust Javier?

8 A. At that point, I thought he was just high.
9 Because when I brought it in, that was a
10 stipulation. He told me, "Hey, carnal, can you
11 bring me some meth?" I know Blue from the street, I
12 know Mario from the streets. I know how he gets.

13 So I told him, "I'll bring you some, but
14 you got to listen to me. Whenever you start wiggling
15 out, you got to promise to come to me, and I'm going
16 to remind you it's just the drugs talking."

17 So he was telling me this. I had that
18 exact conversation with him. I said, "Hey, carnal,
19 check it out. You're just wiggling out. You're high
20 right now. Kick back." You know what I mean?

21 And so that's the understanding where I
22 was, because I don't know if you're familiar with
23 meth. You don't look like the type to ever use
24 meth. So I don't think you'd actually know the
25 effects that it truly has on you, and what it

1 makes -- the psychological games it plays on your
2 head. You know what I mean? And a person with
3 Mario's past -- Mario, you know what I mean, he wigs
4 out. I know him from the streets.

5 Q. Would it be accurate to say that you don't
6 really know when he's telling you the truth?

7 A. No, I know when he's telling me the truth;
8 just not when he's high. I know Mario very well.
9 Like I say, I'm one of the few people that do know
10 Mario, the real Mario, what he truly is as a person;
11 not just what the paper says about him, all his
12 charges. He's a good person.

13 Q. What paper?

14 A. When I refer to paper, what you're reading
15 as charges. If you just read his jacket and his
16 charges, he looks like a real horrible person, but
17 he's really not. If you really took the time to get
18 to know him, he is a good individual. He's kind,
19 he's compassionate, he's loyal. One of his best
20 qualities, he's a very loyal person. He was very
21 loyal to the SNM. So when Daniel told him, "Hey, go
22 talk to Red," he didn't question it.

23 Q. You're relying on what Mario Rodriguez
24 told you, are you not?

25 A. No, sir.

1 Q. Who came to you and told you that you
2 needed to attack Javier Molina?

3 A. Mario, under Dan's orders. He said, "Dan
4 wants you to go." But he knew, like I said, me and
5 Dan have had disagreements throughout the past.

6 Q. Did you hear those orders?

7 A. Him straight out say: "You have to do
8 it"? He says, "You need to do this or else," when
9 we were in the vent. "You got to make sure this
10 gets done, or else," meaning, in my
11 interpretation -- your interpretation could be
12 different, but my interpretation, living the life
13 that we live, when you say "or else" in the prison
14 culture, when there is a mission and you get tasked
15 to do it, if you don't do it or you refuse it, you
16 get a green light put on you. Therefore, when he
17 says "or else," hey, if you don't do it you know
18 there's going to be a green light on you, there will
19 be a hit on you.

20 Q. Mr. Martinez, you're just about the
21 toughest guy in the pen.

22 A. Not necessarily.

23 Q. Why would you be petrified over something
24 like that?

25 A. Do you want to die? Do you want to be

1 stabbed, sir?

2 Q. That's not the question.

3 A. Well, do I? I'm asking you, do I want to
4 die? No. It don't matter how tough I am. It don't
5 matter how well I can fight. If they stab me and I
6 die -- I don't want to die. So of course I'm going
7 to go through with this mission.

8 Q. Why didn't you go to some other SNM people
9 and ask them why this was going to happen, the
10 justification for it?

11 A. Daniel was the senior ranking member in
12 there. If it came from him, it was my understanding
13 there was already consensus throughout the pods this
14 is what had to be done. Dan was making sure it got
15 carried out.

16 Q. Is it not true that's your supposition
17 because you're relying upon what Mario Rodriguez
18 told you?

19 A. He told me to get it done. And then, when
20 I'm having this conversation with Mr. Sanchez in the
21 vent, he says, "Make sure" -- I asked him, "Why do I
22 have to go?"

23 He says, "Because you need to put in jale,
24 you need to earn your huesos. You got to make sure
25 it gets done or else."

1 So, therefore, he didn't straight come and
2 say: "Here, this is your mission. I'm telling you
3 you have to do this." No, he's saying, "All right.
4 Did Blue talk to you?"

5 "Yes, si mon, he talked to me. He told me
6 what's up."

7 "All right. Make sure it gets done or
8 else."

9 So therefore he's saying: "Make sure it
10 happens, because if not, there is going to be a hit
11 on you."

12 And I wouldn't doubt it, due to the fact
13 me and Dan had our disagreements and arguments in
14 the past. Him trying to find any way, knowing that
15 me and Javier were friends, saying "I ain't going to
16 do it" didn't justify his reason to put a green
17 light on him, just because I know me and Dan didn't
18 always see eye to eye.

19 Q. And the bottom line is: You never have
20 liked Daniel Sanchez, have you?

21 A. It's like I say, as a person, he's
22 actually a good guy.

23 Q. The question is: You don't like Daniel?

24 A. No, I do. It's not that I don't like him.
25 He's a good guy. Like I say, do I like the way he

1 carries himself? Not really. Do I like the way he
2 conducts himself in certain areas? Not really. As
3 an individual, he's a good guy. I mean, I liked
4 him. We got along.

5 But the same amount of time we got along,
6 we didn't get along. You know what I mean? It's an
7 interesting culture in prison. You know what I
8 mean? And the gang culture in prison, as we lived
9 it, I didn't agree with the way he was running
10 things. I didn't agree with his view on a lot of
11 things. So therefore, he was the one that always
12 carried himself: "You have to give me respect, you
13 have to do this, you have to do that."

14 And as a man, I respect him for being part
15 of the family, being part of S. But I didn't know
16 him as a man at that time. I couldn't just say,
17 "Oh, I'm going to give you all the respect in the
18 world," because I didn't know who he was. You know
19 what I mean?

20 So to sit here and say I don't like Daniel
21 Sanchez? No, that's a lie, because I do. He's an
22 all-right guy. I don't like the way he does
23 business, I don't like the way he runs the
24 organization. I didn't like that.

25 Q. Mr. Martinez, with regard to the speech

1 you just gave us, how long have you rehearsed that?

2 MS. ARMIJO: Objection.

3 A. It came right now.

4 THE COURT: Overruled.

5 A. I didn't rehearse that.

6 MR. JEWKES: Pass the witness.

7 THE COURT: Thank you, Mr. Jewkes.

8 Anyone else have cross-examination?

9 Mr. Villa?

10 MR. VILLA: Yes, Your Honor.

11 THE COURT: I tell you what: I didn't
12 realize we were already at the break. Do you want
13 to go ahead and have a break at this point, Mr.
14 Villa?

15 MR. VILLA: Yes, Your Honor.

16 THE COURT: All right. We'll be in recess
17 for about 15 minutes.

18 (The jury left the courtroom.)

19 THE COURT: All right. We'll be in recess
20 for about 15 minutes.

21 (The Court stood in recess.)

22 THE COURT: All right. Mr. Martinez, I'll
23 remind you that you're still under oath.

24 THE WITNESS: Yes, sir.

25 THE COURT: Mr. Villa, if you wish to

1 begin your cross-examination of Mr. Martinez, you
2 may do so at this time.

3 MR. VILLA: Thank you, Your Honor.

4 THE COURT: Mr. Villa.

5 CROSS-EXAMINATION

6 BY MR. VILLA:

7 Q. Good afternoon, Mr. Martinez.

8 A. Good afternoon, Mr. Villa.

9 Q. So you killed Javier Molina?

10 A. No.

11 Q. You didn't kill him?

12 A. I participated. I technically did not
13 kill him.

14 Q. You pled guilty to the murder of Javier
15 Molina, didn't you?

16 A. I did.

17 Q. So you killed Javier Molina?

18 A. I pled guilty to aiding in murder and/or
19 aiding and abetting in the murder.

20 Q. You pled guilty to murder?

21 A. Aiding and abetting a murder, yes.

22 Q. He was your best friend?

23 A. Yes.

24 Q. And you helped kill him?

25 A. Yes, sir.

1 Q. If it wasn't for you, he'd still be alive
2 today?

3 A. Not necessarily.

4 Q. But he could be?

5 A. He could be.

6 Q. And you betrayed him, didn't you?

7 A. Unfortunately, I did.

8 Q. Because you wanted to help the SNM, as you
9 testified here today?

10 A. Yes, sir.

11 Q. You wanted to earn your bones?

12 A. Yes, sir. I was a loyal member.

13 Q. You didn't have an SNM tattoo yet, did
14 you?

15 A. No, sir.

16 Q. But I think you testified with Ms. Armijo
17 that you didn't have your SNM tattoo at the time you
18 got arrested in this case, did you?

19 A. No, I didn't.

20 Q. You did not have it?

21 A. No, sir.

22 Q. You got it on your arms, because we saw a
23 picture that didn't have any tattoos on your arms;
24 right?

25 A. Before that, I was locked up in solitary

1 confinement. There is no way -- I'm not an artist,
2 so I couldn't tattoo myself.

3 Q. I think it was your testimony, was it not,
4 that you couldn't get an SNM tattoo because you
5 weren't allowed?

6 A. Yes, sir.

7 Q. And then you did get one after the murder
8 of Javier Molina?

9 A. I put in work, yes, sir.

10 Q. And that work was to help kill Javier
11 Molina?

12 A. Yes, sir.

13 Q. Your best friend?

14 A. Yes, sir.

15 Q. Your buddy?

16 A. Yes, sir.

17 Q. So you got a tattoo out of it?

18 A. Being loyal to the family, yes.

19 Q. An SNM tattoo that you're still wearing
20 today?

21 A. Unfortunately, yes.

22 Q. And after you killed your friend Javier
23 Molina, you tried to cover it up, didn't you?

24 A. Yes, sir.

25 Q. You tried to lie to the Court right here

1 in Las Cruces, the district court, didn't you?

2 A. No, sir.

3 Q. So you're telling me that --

4 A. What do you mean, lying to the Court?
5 I've never been in the courtroom for any other case.
6 I was in with his lawyers, but I was never in any
7 official proceedings.

8 Q. May I have the Elmo, please?

9 I'm going to show you Exhibit FP.

10 The Elmo is fine.

11 You signed this Exhibit FP, Mr. Martinez,
12 under oath knowing that it was going to get used in
13 Jerry Montoya's case; right?

14 A. Yes, in Jerry Montoya's case, when it
15 actually did go forth in the district court, yes.

16 Q. And I think you told Ms. Duncan that the
17 stuff in this affidavit wasn't true?

18 A. Yes, sir.

19 Q. You were trying to cover up the murder of
20 your best friend?

21 A. That was the plan, yes.

22 Q. That was part of your plan, wasn't it?

23 A. It was an SNM plan. It wasn't my plan.
24 It was an SNM plan.

25 Q. You signed this affidavit, didn't you?

1 A. Yes, sir. That's my part in the plan.

2 Q. You swore under oath that this was true?

3 A. Yes.

4 Q. By the way, has anybody prosecuted you for
5 lying under oath?

6 A. No, sir.

7 Q. You haven't been charged with perjury?

8 A. No, sir.

9 Q. The Government hasn't charged you?

10 A. Not yet. I'm sure they can if they want
11 to.

12 Q. Mr. Martinez, why don't you just answer
13 the questions that I ask, instead of volunteering,
14 okay? You'll get another chance with Ms. Armijo.

15 What you did to Javier Molina was a
16 cowardly act, wasn't it?

17 MS. ARMIJO: Objection, argumentative.

18 THE COURT: Sustained.

19 BY MR. VILLA:

20 Q. Did you not tell Sergeant Larcher of the
21 New Mexico State Police and Agent Roundy of the FBI
22 that what happened, the way Javier Molina was
23 killed, was a cowardly way?

24 A. Yes.

25 Q. You said that?

1 A. Well, I never said it was a cowardly way.

2 I know I said --

3 Q. You didn't say it was a cowardly way?

4 A. I said that was my friend. I shouldn't
5 have let it happen. I should have stood up for him.

6 Q. As a matter of fact, you said it was your
7 best friend?

8 A. Yes. Me and Mr. Molina were very close.

9 Q. And you said to those police officers that
10 the way he was killed was a cowardly way?

11 A. I don't recall saying "cowardly," but I
12 know I did have a conversation saying that he
13 shouldn't have died in the first place.

14 Q. If you looked at that interview, that
15 might help refresh your recollection as to what you
16 said?

17 A. Possibly.

18 MR. VILLA: May I approach, Your Honor?

19 THE COURT: You may.

20 BY MR. VILLA:

21 Q. Now, Mr. Martinez, you remember the
22 interview that you talked about with Ms. Duncan on
23 March 10th?

24 A. Yes, sir.

25 Q. And that was with Sergeant Larcher of the

1 State Police?

2 A. Yes, sir.

3 Q. As well as an agent -- this says Randy,
4 but it's actually Agent Roundy; right?

5 A. I guess, sir.

6 Q. This document I'm showing you says March
7 10th, 2014, interview with Timothy Martinez; right?

8 A. Yes, sir.

9 Q. And I'm going to show you page 14. And I
10 want you to read to yourself, starting on line 12,
11 the highlighted portion to line 17. Just read it to
12 yourself.

13 Does that refresh your recollection about
14 what you said?

15 A. Yes, sir.

16 Q. And you said that the killing of your best
17 friend was done in a cowardly way?

18 A. It was. And I was speaking of myself, not
19 the way it was. I'm speaking of myself as being a
20 coward.

21 Q. So you were talking about yourself?

22 A. Yes. Because I participated in it, and it
23 clearly says -- if you read the rest -- after it
24 says "cowardly," it says, "If I would have helped,
25 he might still be alive."

1 Q. So when I asked you, if you would have
2 helped, he might still be alive, that was true?

3 A. Yeah. He might. You said he would be
4 alive. You made it a fact that he would still be
5 alive.

6 Q. So you could have -- when Mario Rodriguez
7 came to you and said he wanted you to get high, and
8 ultimately explained to you the paperwork came for
9 Javier Molina, you could have tried to stop it;
10 right?

11 A. I could -- I'm a low guy on the pole. If
12 Dan says it has to be done, it has to be done.

13 Q. Well, let's talk about that. I didn't ask
14 you what Dan Sanchez did or didn't do. I want to
15 talk -- the answer to my question is yes, you could
16 have tried to stop; right?

17 A. If I would have tried to stop it, I would
18 put a green light on me and a hit on me.

19 Q. Well, you're here today testifying --

20 A. Yes.

21 Q. -- didn't you say if you testify -- Mr.
22 Martinez, when I'm done asking the question, then
23 you can answer. Okay?

24 A. Yes, sir.

25 THE COURT: And if Mr. Villa interrupts

1 you, just stop immediately. Okay?

2 THE WITNESS: All right.

3 BY MR. VILLA:

4 Q. Mr. Martinez, I think it was your
5 testimony that by giving testimony here today, you
6 put a green light on yourself?

7 A. Yes, sir, I did.

8 Q. Okay. So you're afraid -- or you claim
9 that your testimony today is going to put your life
10 in danger?

11 A. Yes, sir.

12 Q. And back when Mario Rodriguez came to you
13 and told you this plan, you just said to the jury,
14 if you tried to stop, you might get a green light on
15 it; right?

16 A. Yes, sir.

17 Q. And back, then, in 2014, you made the
18 decision to go along with it and kill your best
19 friend?

20 A. I was a loyal member of the SNM, so yes.

21 Q. And now you've made a decision --

22 A. To walk away from the SNM.

23 Q. -- to testify for the Government; right?

24 A. Yes, sir.

25 Q. Because you're hoping to get a lesser

1 sentence?

2 A. No, sir.

3 Q. You're not hoping for that at all?

4 A. No, I'm hoping to right my wrong the best
5 I can. And if that involves bringing the people
6 down that were involved in it, then that's my part.
7 I know that will never give Ms. Molina her son back,
8 and I've never been promised anything. I'm doing
9 this to clear my conscience, like I said before.
10 I'm trying to walk with the Lord and trying to get
11 close back to the Lord. And in that, I've got to
12 atone for my sins. And this is the way to atone for
13 them.

14 Q. That's what you want the jury to think;
15 right?

16 A. That's the truth.

17 Q. That's what you're telling the jury;
18 right? That's what you just said?

19 A. Yes.

20 Q. Okay. And you understand that in your
21 plea agreement, in which you pled guilty to
22 murdering your best friend, that you're facing a
23 mandatory life sentence; right?

24 A. Yes, sir.

25 Q. But you know that the Government, if they

1 file that motion for 5K, you can get out of that
2 life sentence? That's a possibility; right?

3 A. Possibility.

4 Q. And it's your testimony to this jury that
5 you're just doing it to atone for your sins, not
6 because you're hoping for a shorter sentence?

7 A. No.

8 Q. All right. So that's what you're saying
9 to the jury?

10 A. Yes. I mean, if I do get a shorter
11 sentence, so be it. But my main thing --

12 Q. I understand what you're saying. So I
13 want to understand that -- you're on in-house
14 parole; right?

15 A. Yes, sir.

16 Q. And you get out from your state sentence
17 April of this year?

18 A. Yes, sir.

19 Q. So a couple of months from now; right?
20 And after your testimony, depending on what the
21 Government does, you have an opportunity to get out
22 of a life sentence earlier, too; right?

23 A. I have a possibility of getting maybe a
24 parole date.

25 Q. And when you entered your plea that Ms.

1 Armijo showed you on direct -- you entered that plea
2 January 26, 2017; right?

3 A. Yes, sir.

4 Q. And just before that, on December 29 of
5 2016, you came in and provided information to the
6 Government; right?

7 A. Yes, sir. And that's when I officially
8 decided to cooperate.

9 Q. And it's your testimony that you aren't
10 hoping for a sentence of, say, three to five years?

11 A. I didn't even know that would be possible.

12 MR. VILLA: Your Honor, I'd like to play
13 what's been marked as Z15 for the jury.

14 MS. ARMIJO: Your Honor, we don't know
15 what this is, or its purpose, if he has --

16 THE COURT: What is this?

17 MR. VILLA: Your Honor, it's a phone call.
18 It's a jail phone call.

19 THE COURT: All right. Do you want
20 discuss it up here at the bench, Ms. Armijo?

21 MS. ARMIJO: Yes.

22 (The following proceedings were held at
23 the bench.)

24 THE COURT: What is the statement you are
25 trying to impeach?

1 MR. VILLA: His expectations in the phone
2 call, in which there is a discussion about him
3 getting three to five years. And then there is
4 another phone call, Z13, in which there is a
5 discussion about him getting a sentence of time
6 served or a few years.

7 THE COURT: The specific sentence he hopes
8 to get?

9 MR. VILLA: Yes.

10 MS. ARMIJO: I think they can ask him if
11 he made the phone calls. In lieu of playing them
12 outright, they should ask him. And if he denies it,
13 they can play --

14 THE COURT: I think he's denied it several
15 times, so I'll let Mr. Villa play the telephone
16 call. Overruled.

17 (The following proceedings were held in
18 open court.)

19 THE COURT: All right. Mr. Villa.

20 BY MR. VILLA:

21 Q. Mr. Martinez, we're going to put this up
22 here in just a minute, but you had some
23 conversations, did you not, with family, friends
24 about your cooperation in this case?

25 A. What do you mean? That I am cooperating?

1 Q. You had phone calls.

2 A. Letting them know that I am cooperating?

3 Q. Well, let me just re-ask the question.

4 You had phone calls from the jail, or wherever you
5 were being detained certain periods of time to
6 discuss your cooperation; true?

7 A. Yes.

8 Q. And those phone calls you know are
9 recorded?

10 A. Yes.

11 Q. I'm going to play you a call from January
12 16, 2017, about two weeks after your first statement
13 to the Government; right?

14 A. Yes.

15 (Tape played.)

16 Q. Mr. Martinez, I paused that briefly. Did
17 it say it was a collect call from Tim -- excuse me,
18 a call from Tim?

19 A. Yeah.

20 Q. You recognize your voice?

21 A. Yes.

22 Q. We'll continue it.

23 (Tape played.)

24 Q. Do you recognize who you're talking to?

25 A. I believe that's my wife.

1 Q. That's your wife?

2 A. Yes, sir.

3 Q. All right.

4 (Tape played.)

5 Q. So Mr. Martinez, did you hear your wife
6 talk to you about the number three to five years?

7 A. I did not hear her say three to five. I
8 heard her saying that I had a very minor role, and
9 they did everything. They had video saying --
10 showing the ones that did everything, and me having
11 a minor role. I didn't hear her throw numbers out.
12 I'm sorry, sir, I really didn't.

13 Q. If we play it again, would you listen?

14 A. If you please.

15 (Tape played.)

16 Q. Did you hear her say, "Why the hell would
17 they go any lower than three to five?"

18 A. That's her making assumptions. My wife,
19 she says, why can't they go lower than three to
20 five. She wants me out today, tomorrow. My wife
21 wants me out as soon as possible, so --

22 Q. So your wife would like a sentence of,
23 say, time served?

24 A. Yeah.

25 Q. So after that phone call, January 16,

1 2017, you enter your plea January 26, 2017; right?

2 A. Yes, sir.

3 Q. And then you have another phone call with
4 your wife on February 6, 2017, which Your Honor, is
5 marked for identification as Z13, and I'd like the
6 play that for the jury.

7 (Tape played.)

8 Q. So that was another call from you; right?

9 A. Yes, sir.

10 Q. Okay. We'll continue.

11 (Tape played.)

12 Q. Did you hear that, Mr. Martinez?

13 A. Yes.

14 Q. So you're talking to your wife about a
15 sentence of time served?

16 A. I also said it would be a true, true
17 blessing if I was able to get that. At no point do
18 you say this is what I'm getting.

19 Q. I heard your answer. The next thing you
20 said was, "or if I have to do a couple of years,"
21 right?

22 A. Or if I said --

23 Q. Mr. Martinez, is that what you said?

24 A. A couple years, yes. I'm throwing out
25 hypothetical numbers.

1 Q. I didn't ask you to explain. My question
2 is a yes-or-no question.

3 A. Yes.

4 Q. Did you tell your wife "or a couple of
5 years"?

6 A. Yes, but I --

7 Q. And so the answer is yes; right?

8 And Mr. Martinez, is a couple generally
9 thought of as two?

10 A. Yes.

11 Q. Now, that wasn't the only thing that you
12 were hoping for with your helping the Government, is
13 it?

14 A. No.

15 Q. You also were hoping to get relocated and
16 have money from the Government to help you relocate?

17 A. Not necessarily money, but relocating. I
18 don't want to stay in New Mexico because my life
19 will be in danger.

20 Q. You didn't think you were going to get
21 money from the Government for relocating?

22 A. I don't know how any of that works.

23 Q. Okay. So let me play you the last call
24 marked for identification as Z14, and this was also
25 a call on February 6, 2017.

1 (Tape played.)

2 Q. Mr. Martinez, this is you and your wife
3 talking again?

4 A. Yes.

5 Q. You just heard you tell your wife, "Call
6 Bryan. He'll tell you what has to happen"?

7 A. To explain what the witness protection
8 program is, yes.

9 Q. And you're talking about Bryan Acee?

10 A. Yes, sir.

11 Q. Let's keep playing.

12 (Tape played.)

13 Q. Mr. Martinez, did you hear where you told
14 your wife: "If I have to do prison, they will help
15 me get training in the electrical field"?

16 A. Yes, sir.

17 Q. "And then help me get a job," if you have
18 to do prison and get out? Yes?

19 A. Yes, sir.

20 Q. And then help your wife get a job in her
21 profession?

22 A. This is all stuff that I found out on my
23 own through my own research.

24 Q. I didn't ask you that question. So why
25 don't you just answer the questions I ask. Okay?

1 A. Yes, sir.

2 Q. Let's keep playing.

3 (Tape played.)

4 Q. Did you hear yourself say, "They'll help
5 relocate us financially wise"?

6 A. Yes, sir.

7 (Tape played.)

8 Q. Do you hear you tell your wife, "They gave
9 us a good chunk of change"?

10 A. Yes, sir.

11 Q. And when you said "a good chunk of
12 change," you're talking about money?

13 A. Yes, sir.

14 Q. So Mr. Martinez, you didn't make a choice
15 to save your best friend, but you did make the
16 choice to try to save yourself from a lifetime in
17 prison, didn't you?

18 A. Not necessarily.

19 Q. Well, we can talk about that a little bit
20 more. But you'd like, would you not, for this jury
21 to find Mr. Perez guilty so that you can get a
22 reduced sentence?

23 A. I --

24 Q. You don't want that?

25 A. -- if Rudy gets found guilty or not

1 guilty, you know what I mean?

2 Q. The question, Mr. Martinez, is: Would you
3 like that, yes or no?

4 A. If the jury finds it appropriate to find
5 him guilty, then yes, he's guilty.

6 Q. You told the jury something about what Mr.
7 Perez said to you in Torrance County Detention
8 Center; correct?

9 A. Yes.

10 Q. I think it was your direct testimony that
11 Mr. Perez said that he had to do his part for la
12 familia, right?

13 A. Yes, sir.

14 Q. Because everyone had to play their part?

15 A. Yes, sir.

16 Q. But what you told the jury that meant was
17 him providing pieces of his walker; right?

18 A. Yes, sir.

19 Q. But this same conversation that you said
20 you had with Mr. Perez, you had with the Government;
21 right?

22 A. Yes, I told them what he said, yes.

23 Q. In fact, the first time you ever told the
24 Government that was January 23, 2018; right?

25 A. Yes, sir.

1 Q. And you got out of Torrance County in the
2 year 2016?

3 A. The end of '16, yes, 29th.

4 Q. So before December 29, 2016?

5 A. No, that's the day I left.

6 Q. That's the day you left?

7 A. Yes, sir.

8 Q. And that's the day you talked to the
9 Government for the first time?

10 A. Yes.

11 Q. Right after Torrance County?

12 A. Yes, sir.

13 Q. And you didn't tell the Government about
14 Mr. Perez' statement then, did you?

15 A. No, sir.

16 Q. And then you talked to the Government
17 again after you entered your plea agreement; true?

18 A. Yes, sir.

19 Q. And you didn't tell them about Mr. Perez'
20 statement then, did you?

21 A. No, sir.

22 Q. It wasn't until a week before this trial
23 that you came up with that statement?

24 A. I did not come up with it. It's something
25 he personally told me.

1 Q. And what you told the Government on
2 January 23, 2018, is a little different than what
3 you told the jury, isn't it?

4 A. That he had to put in work; that was his
5 part for putting in work, giving up the metal.

6 Q. Was what you told the jury today different
7 than what you told the Government on January 23,
8 2018? Yes or no?

9 A. How is it wrote in my 302?

10 Q. I'm asking you.

11 A. I don't know. How is the 302 written up?

12 Q. If I showed it to you, would that help?

13 A. Yes, sir.

14 MR. VILLA: May I approach?

15 THE COURT: You may.

16 BY MR. VILLA:

17 Q. Mr. Martinez, I'm showing you the FBI 302
18 from January 23, 2018, involving your statement;
19 right?

20 A. Yes.

21 Q. And that was written by FBI Agent Thomas
22 Neale?

23 A. Yes.

24 Q. Okay. So I'm going to flip -- and by the
25 way, Thomas Neale was present there along with

1 United States Attorney Maria Armijo; right?

2 A. Yes.

3 Q. So I'm going to flip you to page 3 and let
4 you read this paragraph. Just read it to yourself,
5 okay?

6 Did you get it?

7 A. Yes, sir.

8 Q. So what you told the Government on January
9 23, 2018, was that when Mr. Perez supposedly told
10 you that he had to do his part for la familia and
11 everyone has to play a part, he said, even if it is
12 just to keep your mouth shut?

13 A. Yes, sir.

14 Q. That's what Mr. Perez told you?

15 A. No, sir.

16 Q. So what's written in here is incorrect?

17 A. No, you did not read the whole thing. I
18 said he had to give the metal; that was his part to
19 play for la familia.

20 Q. Mr. Martinez, answer my question. Let me
21 ask you a question. Do you want me to show you this
22 302 again?

23 A. Yes, please, because --

24 MR. VILLA: Your Honor, can we do it on
25 the Elmo?

1 THE COURT: No, you can show it to him
2 again.

3 MR. VILLA: I just meant between me and
4 Mr. Martinez.

5 BY MR. VILLA:

6 Q. So Mr. Martinez, I'm talking about the
7 statement, the la familia statement.

8 A. Yes.

9 Q. I'll get to the other statements in just a
10 minute.

11 A. All right. In that case, yes.

12 Q. Okay. So when he talked about playing his
13 part for la familia, that was in the context of
14 keeping your mouth shut?

15 A. No. I took it in the context of --

16 Q. Well, you answered my question. You said
17 no.

18 A. All right.

19 Q. Fair enough. But it does say in here,
20 right after you tell the Government that he had to
21 do his part for la familia, because everyone has to
22 play a part, even if it is just to keep your mouth
23 shut. It does say that in here; correct?

24 A. It does say that.

25 Q. And what Mr. Perez told you is that he was

1 asked about metal for his walker; right?

2 A. Yes, sir.

3 Q. In fact, what happened was that Mario
4 Rodriguez took the piece of metal from his walker;
5 isn't that true?

6 A. I don't know. I wasn't there.

7 Q. You weren't present for that?

8 A. No, I just recall the conversation me and
9 Mr. Perez had.

10 Q. And that conversation that you and Mr.
11 Perez had was in 2016; correct?

12 A. Yes, sir.

13 Q. So -- and I guess that would have been in
14 the fall of 2016; right?

15 A. Yeah, a little over two years after the
16 incident.

17 Q. Two years later?

18 A. Yes, sir.

19 Q. If Mr. Perez had said to you: "I was
20 really scared and didn't want to get hurt, so I went
21 along with it," that would be weak on his part,
22 wouldn't it?

23 A. Yes, sir.

24 Q. And when you're in the prison setting, in
25 prison culture, you don't want to look weak, do you?

1 A. Absolutely not.

2 Q. Ms. Duncan asked you about your statements
3 to STIU Officer Holguin on Martinez 8, 2017. Do you
4 remember that?

5 A. Yes, sir.

6 Q. And she showed you the statement for that?

7 A. Yes, sir.

8 Q. So the day after you helped kill your best
9 friend, you talked to STIU Agent Holguin; right?

10 A. Yes.

11 Q. And you gave him information about the
12 case, didn't you?

13 A. I said we were in there getting high, yes.

14 Q. I mean, you gave him more information than
15 that, didn't you? You suggested to him that it
16 wasn't just a personal beef; that it was a hit?

17 A. Yes, sir.

18 Q. You suggested that to Agent Holguin?

19 A. Yes.

20 Q. And he asked you about where the metal had
21 come from, didn't he?

22 A. Yes, sir.

23 Q. Because you worked in the wheelchair
24 program; right?

25 A. Yes.

1 Q. And he suspected that this piece of metal
2 may have come from that wheelchair program?

3 A. Yes, sir.

4 Q. So he was asking you questions about that?

5 A. Yes, sir.

6 Q. And even though you gave him information
7 that he didn't know about this being a hit, you
8 didn't say anything about the piece coming from Mr.
9 Perez' walker, did you?

10 A. At that time, I did not, no, sir.

11 Q. Now, I want to ask you, getting back to
12 that statement you made on March 10th, 2014, you
13 agreed with me that Sergeant Larcher of the State
14 Police was there; right?

15 A. Yes, sir.

16 Q. And FBI Agent Roundy was there; right?

17 A. Yes, sir.

18 Q. And I think you told Ms. Duncan that what
19 you told Agent Roundy wasn't true; right?

20 A. It wasn't true, by admitting the fact that
21 I participated, yes.

22 Q. So some of the things you said to Agent
23 Roundy were not true?

24 A. Some of the things I said were not true.

25 Q. And Agent Roundy is a federal FBI agent;

1 correct?

2 A. Yes, sir.

3 Q. You're aware that it's a crime to lie to a
4 federal agent?

5 A. Yes, sir.

6 Q. Has the Government charged you with lying
7 to a federal agent?

8 A. As of this time, no.

9 Q. Have they ever given you indication, since
10 you decided to help them, that they were going to do
11 that?

12 A. No.

13 Q. And I think you testified that there was a
14 period of time when you were helping Mr. Perez --
15 this is before all this happens with Mr. Molina --
16 because you knew he was sick; right?

17 A. Yes, sir.

18 Q. And he sometimes went out to rec, but he
19 didn't go out very often?

20 A. Yes, sir.

21 Q. Mostly stayed in his room?

22 A. Yes, sir.

23 Q. And when he was getting around, he needed
24 to use a walker to get around?

25 A. Yes, sir.

1 Q. And you were actually there in Southern,
2 weren't you, in about 2012 when Mr. Perez was there
3 too?

4 A. Yes, he ended up in LTCU.

5 Q. So that is the long-term care unit; right?

6 A. Yes, sir.

7 Q. That's a prison hospital in Los Lunas?

8 A. Yes, sir.

9 Q. And in 2012 he got very, very sick while
10 you were up there with him in Southern; right?

11 A. Yes, sir. I was living in the house right
12 above him.

13 Q. And in fact, you told the corrections
14 officers that Mr. Perez was really sick and he
15 needed help?

16 A. Yes, sir.

17 Q. And because of that, Mr. Perez then went
18 to the long-term care unit?

19 A. Yes, sir.

20 Q. And are you aware that from there he went
21 to University of New Mexico Hospital for a long
22 period of time?

23 A. I wasn't aware at the time. We spoke
24 about it after the fact. But at the time I had no
25 idea. I just knew they took him and I figured he

1 was in the LTCU, because that's the hospital for the
2 prison.

3 Q. He got back to Southern after that -- from
4 2012 when you made the report that he needed help,
5 he didn't get back to Southern until December of --
6 excuse me -- October of 2013; is that right?

7 A. I don't recall the exact time when he got
8 back.

9 Q. Let me make sure I'm telling you this
10 right. Let's take a look at Mr. Perez' location
11 history. It's already been admitted into evidence.
12 I believe this is V24, Mr. Martinez. We'll show it
13 to you on your screen.

14 And so if we can highlight, it's the fall
15 of 2013 right here. We'll get that a little bit
16 closer for you. So Mr. Martinez, this says that on
17 September 10th, 2013, through October 3, 2013, Mr.
18 Perez was in LTC. Do you see that there?

19 A. Yes, sir.

20 Q. And do you have any reason to believe
21 that's not LTCU, the long-term care unit?

22 A. I have no reason to believe it's not.

23 Q. And then on October 3, 2013, this document
24 indicates he goes to Southern New Mexico
25 Correctional Facility; is that right?

1 A. Yes.

2 Q. And does that sound about the time that
3 Mr. Perez returned to Southern?

4 A. Like I say, I can't recall the exact
5 dates. But given the timeframe, that sounds about
6 right. I know he was gone for about five, six
7 months.

8 Q. But you were still there?

9 A. Yes, sir.

10 Q. And when he got back, he was still pretty
11 sick, wasn't he?

12 A. He was in recovery. I mean, he could
13 move. He actually got in a couple fistfights after
14 the fact he got back. So he could move.

15 Q. My question to you, Mr. Martinez, is: He
16 was still sick?

17 A. Yeah. Well --

18 Q. He spent most of the time in his room?

19 A. Yes.

20 Q. And this is approximately, I guess, five
21 months before the incident with Mr. Molina?

22 A. Yes, sir.

23 Q. After the incident with Mr. Molina, I
24 think you testified at some point you got moved to
25 PNM, to the North facility; correct?

1 A. After -- what do you mean?

2 Q. At some point in time after Mr. Molina was
3 killed --

4 A. Oh, yes, sir.

5 Q. -- you moved to the PNM North facility?

6 A. Yes, sir.

7 MR. VILLA: Your Honor, I marked for
8 identification Defendants' Exhibit V19. It is Mr.
9 Martinez' location history. I move to admit it.

10 THE COURT: Any objection?

11 MS. ARMIJO: No, Your Honor.

12 THE COURT: Any objection from the
13 defendants?

14 MS. DUNCAN: No, Your Honor.

15 MS. BHALLA: No, Your Honor.

16 THE COURT: Mr. Jewkes, are you okay with
17 it?

18 MR. JEWKES: Oh, yes. No objection.

19 THE COURT: All right. Defendants'
20 Exhibit V19 will be admitted into evidence.

21 (Defendants' Exhibit V19 admitted.)

22 BY MR. VILLA:

23 Q. Mr. Martinez, I'm showing you V19. It's
24 your offender physical location history. Do you see
25 that there at the top?

1 A. Yes.

2 Q. Have you ever seen this document before?

3 A. No, sir.

4 Q. Well, I'm going to -- actually, what I'd
5 like to do is pull up the October 2015 timeframe to
6 show you that. Okay. So it indicates here June 25,
7 2015, that you go to PNM; correct?

8 A. Correct, yes, sir.

9 Q. And that's about the time you went to PNM;
10 right?

11 A. Yeah. I thought it was a little later,
12 but yeah.

13 Q. It indicates then from that period of
14 time, through December when you go to the marshal's
15 custody, that at least until November 4, you're in
16 housing unit N3; is that right?

17 A. Till November 4?

18 Q. I apologize. Till October 28.

19 A. October 28, 2015, would be -- yes, that's
20 when I got transferred to Cruces, during Montoya's
21 state case.

22 Q. So this period of time that I've circled,
23 June 25, 2015, to October 28, 2015, you're at PNM in
24 housing unit N3, except for one day when you go to
25 Santa Fe District Court?

1 A. I'm in 3-B and 3-A both, yes.

2 Q. But the housing unit is --

3 A. North. There's two different housing
4 units. There is housing unit North 3-B, and housing
5 unit North 3-A.

6 Q. So those are two separate buildings?

7 A. Yes.

8 Q. And while you were in housing unit North
9 3-B, you were housed with other individuals in this
10 case; correct?

11 A. Yes, sir.

12 Q. And I think that included -- well, let me
13 ask you, you tell me who was there at that period of
14 time when you're in North 3-B.

15 A. Mr. Perez was my neighbor, and I know
16 Mario Rodriguez was in there. Eric Duran, Roy
17 Martinez. Who else was upstairs? I want to say
18 David Calbert. Not too sure who is upstairs. It's
19 all SNM members, so --

20 Q. And many of those individuals are now
21 cooperating with the Government just like you,
22 aren't they?

23 A. There's a few, yes.

24 Q. Eric Duran?

25 A. Yes, sir.

1 Q. Mario Rodriguez?

2 A. Yes, sir.

3 Q. David Calbert?

4 A. Yes, sir.

5 Q. And during this period of time, you guys
6 are in Level 6 segregation, so basically solitary
7 confinement?

8 A. Yes, sir, it's maximum security.

9 Q. So you can talk to your neighbors through
10 the vents, but you don't really get to congregate in
11 the common area of the pod?

12 A. You never have physical interaction with
13 anyone. Like I said, we can talk through -- there's
14 heater vents and air ducts that you can talk
15 through, but you'll never have actual physical
16 contact with anyone.

17 Q. And you get out for rec one hour a day?

18 A. One hour a day in the separate little cage
19 out behind the unit.

20 Q. In some of those instances, you have some
21 of your neighbors in cages next to you, you can talk
22 to them?

23 A. At certain times, yes. It all just
24 depends who you end up next to, how they run the
25 yard. The officers will just start filling up the

1 cages by numbers. I think there's 12 cages. So
2 whoever they strip out first goes, and they just
3 fill them in in random order.

4 Q. Some days you get to talk to other people
5 in your pod, and some days you don't?

6 A. Some days you'll talk to guys in the pod
7 next to you, because everyone doesn't go out in your
8 pod. Twelve people a pod. So unless the whole pod
9 goes out -- say there's four people from our pod,
10 three from the next, and so on, you could be next.
11 There are four pods in each unit.

12 Q. Okay. So during the time period from June
13 2015 to October 2015, when you're in PNM, in the
14 North facility, you agree with me that there's a lot
15 of talk about the Molina homicide; correct?

16 A. Yes.

17 Q. Not every day. But sometimes you get to
18 talk about it; right?

19 A. And it wasn't a main topic. Every now and
20 then it would come up. But if it wasn't -- like I
21 say, rarely, rarely did it come up. It wasn't a big
22 topic of --

23 Q. Were you aware of a hit on Mr. Perez
24 because it was believed that he was cooperating on
25 the Molina case?

1 A. At one time -- I wasn't aware that there
2 was a hit. I had heard that supposedly he was
3 cooperating --

4 MS. ARMIJO: Objection. Calls for
5 hearsay.

6 THE COURT: Sustained.

7 MR. VILLA: Your Honor, we're not offering
8 it for the truth.

9 THE COURT: You got your answer. It was a
10 "yes" answer. So move on and see what the next
11 question is.

12 BY MR. VILLA:

13 Q. Okay. So the answer was, yes, you were
14 aware?

15 A. I wasn't aware. I said I had heard a
16 rumor.

17 MS. ARMIJO: Objection, calls for hearsay.

18 THE COURT: Sustained.

19 MR. VILLA: And so, Your Honor, if you'd
20 like me to approach, I'd like to be heard on this.

21 THE COURT: Well, the jury will not
22 consider this for the truth of the matter. They can
23 only consider it for the fact that -- well, why
24 don't you approach? I'm not sure that I'm seeing
25 what the relevance is.

1 (The following proceedings were held at
2 the bench.)

3 THE COURT: His state of mind doesn't seem
4 to be important. What's the relevance of it? If
5 it's coming in, it seems to me the only relevance is
6 for the truth of the matter.

7 MR. VILLA: It's not offered for the
8 truth. It's offered for when Mr. Cordova takes the
9 stand and testifies about how he got Mr. Perez to
10 talk about the Molina murder, and he's going to
11 testify that he used the rumors to help Mr. Perez.
12 So we don't care whether the rumors are true. We're
13 offering it to show that they existed to inform Mr.
14 Cordova's state of mind and Mr. Perez' state of mind
15 when the statements were being made.

16 THE COURT: Well, I'll give the jury a
17 limiting instruction. I guess I do see some
18 relevance. I do recall Cordova talking about it.

19 MS. ARMIJO: It's relevant with Mr.
20 Cordova, not with this witness, especially when this
21 witness said that he was unaware of it.

22 THE COURT: Well, but it establishes that
23 the rumors were prevalent, and Mr. Martinez would
24 have heard about it. So the existence of the
25 rumors, I think, leads into the truth or nontruth of

1 what Mr. Perez is about to testify on those tapes.

2 All right. I'll allow those questions.

3 MR. CASTELLANO: Just real quick, Your
4 Honor, that opens the door to the redacted
5 transcripts of Rudy Perez, where he has
6 conversations with Mr. Baca, because as a result of
7 the rumors, Mr. Perez talks to Mr. Baca, and Mr.
8 Baca tells him he's okay, and he doesn't need to
9 worry about anything.

10 THE COURT: I don't see it opening the
11 door. Those are two different things.

12 MR. CASTELLANO: But that means Mr. Perez
13 may have heard the rumors and had concerns about it
14 and also addressed those rumors to Mr. Baca.

15 THE COURT: One is a Bruton problem.
16 Relevance of a rumor. The other two, I don't see
17 them opening the door.

18 (The following proceedings were held in
19 open court.)

20 THE COURT: Ladies and gentlemen, you're
21 going to hear Mr. Martinez testify as to what rumors
22 he heard. You cannot consider what these rumors are
23 for the truth of the matter. So it's only the
24 existence of the rumors that you can consider, not
25 the truth of the rumors in any way in the testimony

1 that Mr. Martinez is about to give.

2 Mr. Villa.

3 BY MR. VILLA:

4 Q. So, Mr. Martinez, you heard rumors that
5 potentially there was a hit on Mr. Perez, because it
6 was believed he was cooperating?

7 A. I never heard there was a hit. I heard
8 rumors that he was cooperating; that he'd been
9 cooperating with STIU.

10 Q. So you heard rumors that Mr. Perez had
11 cooperated?

12 A. That's what I heard rumors of.

13 Q. With respect to Molina?

14 A. Yes, sir.

15 Q. And a rumor like that, if it's true, could
16 get Mr. Perez killed?

17 A. Yes, sir.

18 Q. So I want to take you back now to what
19 happened with Javier Molina. And you testified in
20 pretty good detail about those facts. But I want to
21 ask you -- specifically you said that Mr. Molina --
22 after you started to choke him, I think you said his
23 body started to give out; right?

24 A. Yes, I could feel his legs giving out.

25 Q. And it was your testimony that you wanted

1 to give him a chance, so you didn't choke him all
2 the way?

3 A. I loosened my grip, yes.

4 Q. But you did kick his legs out from under
5 him; right?

6 A. To lay him down, yes. He was still in my
7 arms. When I pushed his legs out, I was still
8 holding him. I didn't just take him and drop him.

9 Q. You laid him down on his back?

10 A. Yes.

11 Q. To make it easier for Jerry Armenta and
12 Jerry Montoya to stab him to death?

13 A. Yes.

14 Q. Mr. Molina was able to get up?

15 A. Yes, he was.

16 Q. And push his way out, and start running
17 down the tier to the stairs; right?

18 A. Yes.

19 Q. And I think it was your testimony that he
20 said, "Okay, carnal, you got me. I'm leaving,"
21 something like that?

22 A. "All right, all right, carnal. You got
23 me. I'll leave."

24 Q. When he says, "carnal," he's talking
25 about -- carnal means brother; right?

1 A. Yes, sir.

2 Q. The term that you guys used for each
3 other?

4 A. Yes, sir.

5 Q. And Mr. Molina, before you killed him, was
6 your carnal; right?

7 A. Yes, sir.

8 Q. So, as Mr. Molina is running down the
9 stairs and he says that, didn't Mario Rodriguez tell
10 him, "You're no carnal"?

11 A. Yes. By code --

12 Q. Can you answer my question? The answer is
13 yes?

14 A. I don't know. I don't know if he said
15 that.

16 Q. So you didn't hear?

17 A. I did not hear that.

18 Q. You didn't hear Mario Rodriguez say,
19 "You're no carnal"?

20 A. No, I did not hear. He was on the top
21 tier and I was on the bottom.

22 Q. And even though you could have saved
23 Mr. Molina, you didn't, did you?

24 A. No.

25 Q. You weren't really a carnal to him, were

1 you?

2 A. I was loyal to the SNM, sir.

3 Q. You weren't a carnal to Mr. Molina when
4 you let him get killed, were you?

5 A. I was loyal to the SNM, sir.

6 Q. Answer my question.

7 A. Was I a carnal? Technically, when there
8 is a paperwork, you're no longer a carnal. No, I
9 wasn't a carnal to Javier.

10 Q. It's a yes-or-no question.

11 A. I just answered that, sir. I said when
12 there is paperwork, you're X'd out. And when you're
13 X'd out, knowing there's a hit on you, you're no
14 longer a carnal. Javier Molina was not my carnal at
15 the time.

16 Q. You never saw Mr. Molina's paperwork, did
17 you?

18 A. No, sir.

19 Q. Would it surprise you that Mario Rodriguez
20 testified here in court that the paperwork wasn't
21 much?

22 A. I'd heard rumor that we --

23 Q. My question to you, Mr. Martinez -- stop
24 your answer.

25 My question to you, Mr. Martinez, is:

1 Would it surprise you to learn that Mario Rodriguez
2 testified here in court that the paperwork on
3 Mr. Molina was not much?

4 A. Yeah.

5 Q. That would surprise you?

6 A. Like I said, I've heard it wasn't much.

7 Q. I'm not asking what you heard. I'm asking
8 you whether that surprises you. It's a yes-or-no
9 question.

10 A. Not really. But in a way, yeah, I have
11 mixed feelings about it.

12 Q. You killed your carnal over "not much,"
13 didn't you?

14 A. Yes. I'd be very shocked if that's the
15 case.

16 MR. VILLA: No further questions, Your
17 Honor.

18 THE COURT: All right. Thank you, Mr.
19 Villa.

20 All right. Any other -- Ms. Bhalla?

21 MS. BHALLA: Not at this time, Your Honor.
22 Thank you.

23 THE COURT: Ms. Bhalla.

24 Mr. Jewkes?

25 MR. JEWKES: Very little, Your Honor.

1 MS. ARMIJO: Your Honor, didn't Mr. Jewkes
2 already go? I believe it's --

3 THE COURT: Do you want to let him get
4 done before you do your redirect?

5 MS. ARMIJO: Oh, sure, if he has more.

6 MR. JEWKES: It will be very limited, Your
7 Honor.

8 THE COURT: Go ahead, Mr. Jewkes.

9 RECROSS-EXAMINATION

10 BY MR. JEWKES:

11 Q. Mr. Martinez, I'd like to clarify one
12 point with you. On direct examination you talked
13 about an undercover tattoo. Do you remember that?
14 Did you use the term "undercover tattoo"?

15 A. Yes, sir, on myself, yes.

16 Q. On yourself. Okay. Why do you use the
17 term "undercover"?

18 A. Because the SNM is usually bright and
19 bold, big S, with an NM in it. Mine is more of a
20 collage, where you really got to look at it to
21 actually see it. It's not a patch by itself. It's
22 designed into the collage, where -- so it's
23 undercover, like, because a lot of us, we're not
24 supposed to go out there and represent to law
25 enforcement, oh, we're from the SNM.

1 Q. Where is this tattoo on you, sir?

2 A. Right here, sir.

3 Q. All right. So it would be, say, like a
4 disguised tattoo?

5 A. Yes, sir.

6 Q. But it is SNM?

7 A. Yes, sir.

8 Q. And where did you get it?

9 A. In Torrance County, which is Estancia, New
10 Mexico.

11 Q. And when did you get it?

12 A. Probably August, September of '16. I'd
13 say -- wait, yeah, September '16. We got picked up
14 in '15, so --

15 Q. So we're talking about somewhere between
16 August to September of the year, August 2016?

17 A. Yes, sir.

18 Q. Roughly two years, a little more than two
19 years after the death of Javier Molina?

20 A. Yes, sir.

21 Q. Okay. And be fair to say that it was
22 celebratory tattoo? In other words, to celebrate
23 your entry into SNM?

24 A. In a way, yes.

25 Q. In a way?

1 A. I finally earned the right to carry the
2 patch, yes.

3 Q. The right to carry the patch?

4 A. Yeah, the right to get the SNM tattooed on
5 me.

6 Q. Something like a right of passage?

7 A. Yes, sir.

8 Q. Okay. And you told us that Javier Molina
9 was your best friend?

10 A. Yes, sir.

11 Q. And yet over two years after his death,
12 you celebrate his death with a tattoo?

13 A. I was a loyal member of the SNM at the
14 time, sir.

15 Q. But you're not loyal now?

16 A. No, sir. When it comes to the SNM, the
17 SNM comes before everything. They tell you that
18 when you join. It comes before family; comes before
19 friends; comes before everything. The SNM is your
20 family. The SNM is Number 1, no matter what. It
21 comes before your wife, your children, everything.
22 So being a loyal soldier for them, yes, I got it.
23 But now I'm not.

24 Q. You didn't really believe all that, did
25 you?

1 A. At the time, yeah.

2 Q. And what brought about the miraculous
3 change in you?

4 A. Because I had seen where -- how they use
5 people. I seen -- like I said, I wanted to right my
6 wrongs. I've been carrying Javier's death on me for
7 a long time.

8 Q. Let me stop. You wanted to what?

9 A. Right my wrongs.

10 Q. Right your wrongs. All right.

11 A. Yes, sir. I mean, I'd been carrying
12 Javier's death with me for a long time. I mean, I
13 know, like I've said many times, there is nothing I
14 could do that's going to bring Mrs. Molina her son
15 back.

16 MR. JEWKES: Pass the witness.

17 THE COURT: Thank you, Mr. Jewkes.

18 Ms. Armijo, do you have redirect?

19 MS. DUNCAN: Your Honor, before we start
20 redirect, can we approach for a moment?

21 THE COURT: You may.

22 (The following proceedings were held at
23 the bench.)

24 MS. DUNCAN: I don't mean to be
25 insensitive. But Javier Molina's wife is in the

1 audience coming in, crying, going in and out,
2 audibly crying. She's back in the back crying. I
3 totally understand why this testimony is painful for
4 her, but it's distracting.

5 THE COURT: What's the name of that lawyer
6 back there?

7 MR. VILLA: Jess Lilly.

8 THE COURT: Who's the tall guy?

9 MR. VILLA: He's at the U.S. attorney's
10 office.

11 THE COURT: Who is the tall guy that used
12 to be with Jess Lilly back there?

13 MS. ARMIJO: Jerome.

14 MS. DUNCAN: Jess Lilly just left.

15 MR. VILLA: Maybe we can take a break.

16 MS. DUNCAN: Your Honor, could we not do
17 that in front of the jury? Because I think the jury
18 is going to associate that --

19 THE COURT: What do you want?

20 MS. DUNCAN: Take a brief recess, ask her
21 to leave, and come back.

22 MR. CASTELLANO: Does the jury know who
23 the next of kin is?

24 THE COURT: I don't even know who she is.

25 MR. CASTELLANO: I don't know that the

1 jury knows who she is.

2 (The following proceedings were held in
3 open court.)

4 THE COURT: All right. We'll take about a
5 five-minute break. All rise.

6 (The jury left the courtroom.)

7 THE COURT: Ms. Molina, which one are you?
8 Who is Ms. Molina?

9 All right. You've got two choices. You
10 either compose yourself and you can stay in the
11 courtroom, or if you can't compose yourself and
12 you're going to make noise going in and out, you've
13 got to stay out. All right? You've got to choose.
14 So either -- make up your mind what you're going to
15 do. If you think you're going to lose composure,
16 leave, and don't make any noises going out. All
17 right. Do you understand?

18 MRS. MOLINA: Yes, Your Honor.

19 THE COURT: If you don't, I'll have to ask
20 you to leave permanently. Do you understand?

21 MRS. MOLINA: Yes.

22 THE COURT: All right. So either compose
23 yourself and you can stay in the courtroom --

24 MRS. MOLINA: I'm leaving.

25 THE COURT: All right. All rise.

1 (The jury entered the courtroom.)

2 THE COURT: All right. Be seated.

3 All right. Ms. Armijo, do you have
4 redirect of Mr. Martinez?

5 MS. ARMIJO: Thank you, Your Honor.

6 THE COURT: Ms. Armijo.

7 REDIRECT EXAMINATION

8 BY MS. ARMIJO:

9 Q. Mr. Martinez, Mr. Jewkes was just asking
10 you about the tattoo that you had on your arm that
11 had an S. After Javier Molina was killed, at some
12 point did you have a conversation with Daniel
13 Sanchez about tattoos?

14 A. No, I wasn't around Daniel.

15 Q. Let me put a better timeframe on this.
16 After you were charged in this case along with Mr.
17 Sanchez, were you housed with him at some point?

18 A. Yes, in an indirect way. We were in Otero
19 County. I want to say I was in restrictive housing
20 unit 1 and he was in restrictive housing unit 2. So
21 we could yell back and forth over the walls in the
22 rec yard.

23 Q. Did you have a conversation with him about
24 a tattoo, tattoos that you would be receiving?

25 A. No, not at that time.

1 Q. Did you at any time have a conversation
2 with him about tattoos?

3 A. Not necessarily. The only conversation
4 afterwards, he told me, "You have my respect. Now
5 you are officially a carnal in my eyes." So that, I
6 took I earned the right to get it. He never
7 officially said, "Oh, you can go get it now." But
8 by him officially acknowledging me as an official
9 carnal, that gave me the right to put it on.

10 Q. Did -- now, Ms. Duncan was asking you
11 about, for example -- if I could have the Elmo,
12 please.

13 Ms. Duncan was asking you about
14 Defendants' Exhibit FP. Do you recall that?

15 A. Yes.

16 Q. And this is dated the 10th of November,
17 2015?

18 A. Yes, ma'am.

19 Q. And what was the date, approximately, that
20 you had that conversation with Mr. Baca?

21 A. This was the week before Halloween, so
22 whatever Halloween in October is. So the last week
23 of October, I got to Dona Ana, the county, for Jerry
24 Montoya's state case, or the day or so before, one
25 or two days before Halloween.

1 Q. So when you were in the process of writing
2 these affidavits and assisting with that
3 prosecution, to the extent that you were going to
4 have Jerry -- you were assisting Mr. Montoya, was
5 that after the conversation that you had with
6 Anthony Baca in reference to you not being a rat?

7 A. Yes. I did this all after the
8 conversation.

9 Q. And why did you do that?

10 A. Because that was the plan to get Li'l
11 Jerry Montoya off. Jerry Armenta was going to take
12 the whole charge. And then they came to our -- it
13 was brought to our attention that Jerry Armenta
14 started cooperating with the state, and at that time
15 the plan was to have me help Li'l Jerry Montoya get
16 off, because -- so that was the plan. They all
17 knew -- everyone knew that I was going to try to
18 help Li'l Jerry Montoya get off.

19 Q. I believe the amount was close to \$1050
20 that you've received from the FBI?

21 A. Give or take \$50. I think it was \$1,100.

22 Q. And are you aware that the FBI would give
23 it to you in chunks, so as not to have to come see
24 you every month?

25 A. Yes, ma'am.

1 Q. And if your cooperation started in
2 December, and went until the last payment or until
3 now, would that be approximately 14 months? Would
4 that be right?

5 A. Yes, ma'am.

6 Q. All right. Sorry, I don't trust my math.
7 So if it's 15 divided by -- so would that be
8 approximately \$75 a month?

9 A. Yes, ma'am.

10 Q. Now, did the FBI or anybody ever make you
11 any promises about what your sentence would be?

12 A. No, ma'am.

13 Q. When you were talking to your wife, and
14 she's throwing out numbers, why would you talk about
15 such low numbers with her?

16 A. Because that was my wife thinking,
17 knowing -- because my wife knew what happened -- so
18 knowing that I wasn't a direct person that actually
19 stabbed him, she was saying that, in her world, I
20 should get a lot less time than anything, because I
21 had a very minimal role. That was just her throwing
22 numbers. It was not me telling her I'm going to get
23 this or I'm going to get that. I never mentioned
24 the possibility. If you hear the conversation, she
25 said, "Why can't you get this or that or even

1 lower?"

2 I mean, that's just her throwing numbers
3 out there.

4 Q. When you spoke to Daniel Sanchez in the
5 vents, after Mario Rodriguez had told you about the
6 plan, what was your belief as far as Daniel
7 Sanchez's conversation with you?

8 A. That I did a good job; that I was -- like
9 he said, he says, "Hey, you have my respect now. I
10 won't talk shit about you no more. You're a carnal.
11 You've earned my respect."

12 Q. I want to go back before the murder
13 occurred, when he's talking to you, and he says,
14 "Did Blue talk to you?" What, in your mind, was he
15 referring to?

16 A. Did Blue tell me about what's going to
17 happen about the plan to kill Javier.

18 Q. And did that, in your mind, verify that he
19 had -- it was at his direction?

20 A. Yes. Once again, Mario told me, "Dan is
21 making you go." And when I was having the
22 conversation with Daniel through the vent, "It needs
23 to get done or else," knowing like he knew that
24 Mario was going to talk to me, because he's the one
25 that told Mario to go talk to me.

1 Q. And Mr. Jewkes indicated that -- was
2 talking about you and your relationship with Daniel
3 Sanchez. And you indicated that you thought he was
4 a decent enough person, but that you disagreed with
5 his conduct. What did you mean by that?

6 A. Just the way he carried himself. The way
7 he demanded the respect. I mean, just his -- he has
8 that -- he's a good guy, he's charismatic, I mean,
9 but he'd always talk down on me, like I was a
10 lesser, that I was a nobody to him. So I didn't
11 like the way he carried himself in that respect, how
12 he conducted himself.

13 Q. Now, you indicated with Mr. Villa that Mr.
14 Perez had gotten into -- Rudy Perez had gotten into
15 fistfights?

16 A. Yes.

17 Q. When did those occur?

18 A. He had a couple -- well, he got back from
19 his surgery, which I think he said he got back in
20 October or -- yeah, October of '13. So he had a
21 couple in between October and March. One was with
22 Jerry Montoya. I know that. He had a couple fights
23 there.

24 Then he actually had another one when we
25 were in Estancia with Vincent Garduno, and I'm

1 actually one of the ones that broke that fight up.
2 And after breaking that fight up, I ended up having
3 to actually get in a fight with Vincent, because he
4 was mad for the fact that I stopped him from beating
5 up Rudy.

6 Q. Now, when you're talking to Mr. Jewkes
7 about the hearing, the misconduct, you were talking
8 about a statement that Ronald Sanchez wrote. Do you
9 recall that?

10 A. Yes, ma'am.

11 MS. ARMIJO: May I approach the witness,
12 Your Honor?

13 THE COURT: You may.

14 A. Yes, ma'am.

15 BY MS. ARMIJO:

16 Q. Are you familiar with that item?

17 A. Yes, ma'am. I'm the one that -- I
18 actually wrote it in my own words and shot it up to
19 him and told him what to write.

20 MS. BHALLA: Your Honor, I apologize. Can
21 we have a reference to the exhibit or a Bates
22 number? I'm sorry.

23 MS. ARMIJO: I don't have a Bates number.

24 BY MS. ARMIJO:

25 Q. And what did you have Ronald Sanchez do

1 for you as part of that process?

2 A. I helped him cover up my involvement by
3 saying that I had him downstairs waiting, under the
4 false pretense of making a spread. That was the
5 story, that we were going to make a spread. There
6 was never no spread ever involved. That was just
7 the story that I gave him. "Hey, tell them I told
8 you, hold on, I'll go help you make this spread.
9 I'm going to go get high with Javier real quick."
10 Then I told him, "Make sure you say" -- like I say,
11 I wrote it out pretty much in my words saying, "Hey,
12 at no point in time did you hear any altercation.
13 At no point in time did you see me and Javier act
14 aggressively or in any hostile manner towards each
15 other." And I gave him, like, a spider web, and
16 that's what he ended up coming out with. That was
17 his version of it.

18 Q. And were you still an SNM Gang member at
19 the time?

20 A. I was very active at that point in time.

21 Q. When you got the S tattoo on your arm,
22 were you still an SNM Gang member?

23 A. I was very active and loyal.

24 Q. When Javier Molina was coming down the
25 stairs after he had been -- or while he was being

1 stabbed, did you consider him a carnal at that time,
2 based on the paperwork?

3 A. At that point in time, no. Due to the
4 fact of being paperworked, you're automatically X'd
5 out. When it's been confirmed that there is
6 paperwork, you're automatically X'd out. So he was
7 no longer one of my brothers. As much -- like I
8 say, on an individual basis he was a friend, but my
9 loyalty lied with the SNM. And unfortunately, in
10 the gang world, like I told them, that the SNM came
11 before anything. They came before family, comes
12 before kids, children, friendship, anything. Your
13 loyalty lies with the SNM. So I had to put my
14 friendship aside, and --

15 Q. And were you loyal to the SNM up until the
16 time that you first decided to cooperate at the end
17 of December in 2016?

18 A. Yes, ma'am, I was very loyal.

19 MS. ARMIJO: No further questions.

20 THE COURT: Thank you, Ms. Armijo.

21 All right. Mr. Martinez, you may step
22 down. Is there any reason --

23 MS. DUNCAN: I'm sorry, could I just have
24 a brief recross?

25 THE COURT: All right. Ms. Duncan.

25 Q. That was also before this alleged

1 conversation with Mr. Baca?

2 A. Yes.

3 Q. And I think you testified that the
4 statement you gave on November 10th, 2015 -- so
5 that's Defense Exhibit FP, you -- that was drafted
6 by Mr. Montoya's lawyer; correct?

7 A. Yes.

8 Q. And then you met with your lawyer and went
9 over and made some changes; correct?

10 A. Yes, ma'am.

11 Q. We talked about the discovery in this
12 case. You received a tablet with discovery in about
13 June 2016?

14 A. Yes.

15 Q. And you had that tablet until it was taken
16 from you last year; correct?

17 A. Yes, ma'am.

18 Q. And when was it taken?

19 A. May -- April, May. But at that time I did
20 not have it in my possession every day. There would
21 be periods of time, which you're well aware of,
22 where we'd have to send our tablets in to get them
23 updated. And receiving them back would sometimes
24 take --

25 Q. All I asked was when it was taken away,

1 and that was May 2017; correct?

2 A. Yes.

3 Q. And when you testified you would sometimes
4 say "you see -- you see," when you were referring to
5 the video of the Javier Molina killing; correct?

6 A. Yes.

7 Q. Because you'd reviewed that video in
8 discovery?

9 A. Well, of course, I was fighting the case.
10 I was still an active member.

11 Q. I'm asking if you reviewed a video.

12 A. Yes.

13 Q. And you reviewed it multiple times;
14 correct?

15 A. Yes.

16 Q. So you were explaining to the jury that
17 when you see you on the video, this is what had
18 happened; correct?

19 A. Yes.

20 Q. And that's from -- okay. So you -- the
21 tablet was taken from you on May 2017 because you
22 reset it?

23 A. Yes.

24 Q. And before you reset the tablet, you used
25 Gerald Archuleta's tablet to access the internet;

1 correct?

2 A. No.

3 Q. You never used Gerald Archuleta's tablet
4 to send emails?

5 A. No.

6 Q. And are you aware that your tablet is
7 being forensically reviewed?

8 A. Yes.

9 Q. And what do you expect that we will find
10 from that forensic review of tablet?

11 MS. ARMIJO: This is beyond the scope of
12 my redirect.

13 THE COURT: Well, I'll allow it.
14 Overruled.

15 A. All right. They're going to find
16 Facebook, they're going to find music videos, music
17 downloads without videos, movies, porn movies,
18 searches on USC, searches for sports, searches for
19 school.

20 BY MS. DUNCAN:

21 Q. And for how long were you accessing the
22 internet using your tablet?

23 A. From a little after February, a couple
24 weeks into February, until I got it took away.

25 Q. So from February to May of 2017?

1 A. February, March -- yeah, April, May.
2 Somewhere in that. Either April or May is when they
3 came. So a couple months, two or three months.

4 MS. DUNCAN: I have no further questions,
5 Your Honor.

6 THE COURT: Thank you, Ms. Duncan.
7 Ms. Armijo, do you have anything further?

8 MS. ARMIJO: No, Your Honor. Thank you.

9 THE COURT: All right.

10 Mr. Martinez, you're excused from the
11 proceedings -- or you may step down.

12 Is there any reason Mr. Martinez cannot be
13 excused from the proceedings?

14 MS. ARMIJO: No, Your Honor.

15 MS. DUNCAN: Yes, Your Honor. We'd ask to
16 the Court to reserve Mr. Martinez with regard to the
17 tablet.

18 THE COURT: All right. You're subject to
19 being re-called, so you'll need to leave the
20 courtroom. You may leave the courthouse, but you
21 may have to come back in. So be sure you don't
22 discuss your testimony with anyone while this trial
23 is taking place. Okay?

24 THE WITNESS: All right, sir.

25 THE COURT: Thank you, Mr. Martinez.

1 Thank you for your testimony.
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
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2 STATE OF NEW MEXICO

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5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
6 Official Court Reporter for the State of New Mexico,
7 do hereby certify that the foregoing pages
8 constitute a true transcript of proceedings had
9 before the said Court, held in the District of New
10 Mexico, in the matter therein stated.

11 In testimony whereof, I have hereunto set my
12 hand on this day of , 2018.

13
14 
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